S. HRG. 98-554—PART 2

HOME RULE ACT AMENDMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1858

TO AMEND THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT, AND FOR OTHER PURPOSES

PART 2

APRIL 25, 1984

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CONTENTS

Page

Opening statement of Senator Mathias 1

WITNESSES

WEDNESDAY, APRIL 25, 1984

Hon. Walter E. Fauntroy, District of Columbia Delegate to the U.S. House of Representatives 4
Marion Barry, Jr., Mayor of the District of Columbia, accompanied by Pauline A. Schneider, director of intergovernmental relations, and Alphonse G. Hill, deputy mayor for finance 8
David A. Clarke, chairman, District of Columbia City Council, accompanied by Charlene Drew Jarvis, councilwoman of the District of Columbia City Council, Gregory E. Mize, general counsel, and Richard Clark, executive assistant 21
Alan Schott, Assistant General Counsel for Domestic Finance, Department of the Treasury 39
Joseph E. diGenova, U.S. attorney for the District of Columbia, U.S. Department of Justice 53

ALPHABETICAL LIST OF WITNESSES

Barry, Marion, Jr.:
Testimony 8
Letter to Senator Mathias from Mayor Barry and David A. Clarke, chairman, Council of the District of Columbia, with an attachment, February 28, 1984 9
Letter from D. Lowell Jensen, Associate Attorney General, U.S. Department of Justice, March 14, 1984 14
Prepared statement 18
Clark, Richard: Testimony 21
Clarke, David A.:
Testimony 21
Prepared statement with attachments 27
diGenova, Joseph E.:
Testimony 53
Prepared statement 64
Fauntroy, Hon. Walter E.: Testimony 4
Hill, Alphonse G.:
Testimony 8
Letter to Senator Mathias from Alphonse G. Hill, deputy mayor for finance, May 2, 1984 46
Jarvis, Charlene Drew: Testimony 21
Mize, Gregory E.: Testimony 21
Schneider, Pauline A.: Testimony 8
Schott, Alan: Testimony 39

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letter to Senator Mathias from M.B. Oglesby, Jr., Assistant to the President, April 23, 1984 3
Text of S. 1858 67

Page

Prepared statement of James W. Dyke, Jr., and Martin F. Robinson, of Sidley & Austin, and Clinton Chapman, Chapman, Norwind & Vaughters (co-bond counsel for the District of Columbia) 72
Prepared statement of Thomas M. Zuniga, executive director of D.C. Housing Finance Agency 73
Letters to Senator Mathias from:
American Federation of Government Employees 74
American Federation of State, County & Municipal Employees 75
Board of Trade (Greater Washington) 77
Communications Workers of America 79
Communications Workers of America, Local 2336 80
Consortium of Universities of the Washington Metropolitan Area 81
D.C. Bankers Association 83
D.C. Builders Association/Commercial Industrial Institutional Council of Washington, DC 84
Federal City Council 86
Federation of Citizens Associations of the District of Columbia 87
Fraternal Order of Police, Metropolitan Police—Labor Committee 101
Lazard Frères & Co 103
League of Women Voters of the District of Columbia 106
Metropolitan Washington Council, AFL–CIO 108
Washington Board of Realtors, Inc 109

HOME RULE ACT AMENDMENT

WEDNESDAY, APRIL 25, 1984

U.S. SENATE,
SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room SD-628, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Present: Senators Mathias and Eagleton.

Staff present: Eileen Mayer, chief counsel; Margaret Crenshaw, minority chief counsel; and Sandi Muschette, chief clerk.

OPENING STATEMENT OF SENATOR MATHIAS

Senator MATHIAS. This morning the Subcommittee on Governmental Efficiency and the District of Columbia continues hearings on S. 1858, legislation to correct deficiencies in the District of Columbia Home Rule Act caused by the Supreme Court's ruling last summer in *INS* v. *Chadha.*

I introduced S. 1858 on September 20, 1983, along with Senator Eagleton—and I might mention that Senator Eagleton has been delayed in another committee but will be joining us shortly—the ranking minority member of this subcommittee. The legislation answers the constitutional issue raised by *Chadha* with respect to the congressional legislative veto mechanism contained in the Home Rule Act. It is intended as a simple, technical correction, which will maintain the status quo ante between the Congress and the city, as far as is practicable. It would do this by bringing the congressional legislative veto contained in the Home Rule Act in line with the *Chadha* requirements of bicameral congressional action and presentment to the President.

When Congress gave home rule to the citizens of the District, it retained a mechanism by which it could stop an enactment of the city council from becoming law. It is interesting to note that this mechanism has been used only twice since the home rule process began in 1975, while, on the other hand, some 800 enactments of the city council have become law. So, it is not a very widely used process.

However, the shadow cast upon home rule by the *Chadha* decision seriously threatens the ability of the city to continue to function as an operating municipality. The ramifications of the decision ripple across the entire fabric of the city government and business, and are being felt most strongly in the financial area. There is an

urgency to this correction that everyone recognizes, and that, I am hopeful, will facilitate an agreement in the near future.

Today, we will focus on the objections to S. 1858 which have been raised by the U.S. Department of Justice. We hope to be able to review Justice's concerns in light of the entire picture—including the financial ramifications to the city and to the Federal Government.

Today's witnesses include the Mayor, the chairman of the city council, and the U.S. attorney for the District of Columbia. In addition, a representative from the U.S. Treasury will appear to answer questions about the city's finances vis-a-vis the Federal Government.

Having said that much, I suppose I ought to start, really, with the basic question of the day, a question that concerns every member of this committee and, in fact, every Member of Congress. That question is old and familiar: Why are we here?

Well, unlike many of the questions that are asked on Capitol Hill, this one has a very simple answer. It only requires indulging in that old fashioned exercise of looking at the law. Not many people look at the law anymore. It is easier to make speeches. But I think this is an occasion on which we ought to look at the law.

The law says that it is the Congress which—

> Shall have Power * * * to exercise exclusive Legislation in all Cases whatsoever over such District not (exceeding 10 Miles square) as may by the Cession of Particular States, and the Acceptance of the Congress, become the Seat of Government of the United States.

"To exercise exclusive legislation in all cases." So there is not a question as to where the responsibility in this matter is. The responsibility is upon the 535 Members of Congress, and nowhere else. Let us make that clear at the very outset. I hope that every Member of Congress will recognize that responsibility.

As Mr. Fauntroy knows, the Congress is very anxious to exercise power when it wants to. This is a case where it has to accept the responsibility that is concurrent with that power.

The Constitution contempletes exclusive jurisdiction over the District on the part of the Congress. But even in our great system of separation of powers, there is some overlap. The overlap occurs in a number of places in our Constitution. The Senate, for example, shares with the President the power of appointment, which is an executive function. The President shares with the Congress some part of the legislative function, because his signature is a necessary part of the process of enacting a bill into law.

For that reason, I invited the President of the United States to send a representative to sit with us today and give us the benefit of his views. When I say "representative", I mean someone directly from the White House, someone who exercises the kind of role that Mr. Charles Horsky did in the past or that Daniel Patrick Moynihan once did. Both of these gentlemen served in the White House as sort of "chaplains" for the District of Columbia.

I regret that the President has not designated a member of the White House staff to join with the other administration spokesmen who will be here today. I think it is an unfortunate absence. I would like the President's reasons for not joining in the hearing to be made a part of the record and so I will include the answer

which was sent to me on the President's behalf, declining the invitation to attend.

[The letter referred to follows:]

THE WHITE HOUSE,
Washington, DC, April 23, 1984.

Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR MATHIAS: I am responding to your letter of April 9, 1984 to the President requesting that a representative of the White House testify on S. 1858 at a hearing of the Subcommittee on Governmental Efficiency and the District of Columbia on April 25, 1984. I regret that we must decline that request.

From the Administration of George Washington to the present day, it has been a central tenet of the doctrine of separation of powers among the three branches of the Federal Government that the President is not subject to questioning as to the manner in which he formulates Executive policy. Traditionally, this elemental principle has also been applied to members of the President's personal staff, who participate in the deliberative process through which such policies are developed.

This Constitutional privilege of the Chief Executive is founded in practicality as well as tradition and law. The President cannot fulfill his Constitutional duties without the frank and candid advice of his closest associates. Such candor is possible only in an atmosphere that insures that the advice will remain confidential, so that all options and views will be fully presented, candidly considered and openly expressed as the President develops his policies and programs. Thus, to present testimony would set an undesirable precedent that would seriously inhibit the ability of presidential advisors, now and in the future, to function effectively in providing support to the Presidency.

With best wishes,
Sincerely,

M.B. OGLESBY, Jr.,
Assistant to the President.

Senator MATHIAS. Of course, the Congress, in exercising its exclusive jurisdiction, has delegated the day-to-day authority for running the city to the Mayor and city council, under the process that we call home rule, a process that I have supported very strongly.

I am glad that we will be hearing from representatives of the city government, including Mayor Barry, and city council chairman Clarke. I think that is a proper way to bring together the various parties, who not only have an interest, a responsibility and a duty, but the knowledge and the experience.

Although we don't have any "White House chaplain" with us today, I think we might call upon the chaplains of the past, Mr. Horsky and Senator Moynihan, who have exercised this function, to give us the benefit of their advice and counsel as a part of this ongoing process.

We have had numerous requests from interested citizens and citizens groups to testify today. They include the Fraternal Order of Police, the Greater Washington Board of Trade, the local American Civil Liberties Union, and the Consortium of Universities of the Washington Metropolitan Area.

Because of the need to expedite the proceedings, we have asked these groups to submit written statements, and I will direct that the record be kept open for a week for further submissions, should they be needed.[1]

We begin today with the testimony of the congressional representative of the District of Columbia, the Honorable Walter Fauntroy.

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[1] The statements begin on p. 74.

TESTIMONY OF HON. WALTER E. FAUNTROY, DISTRICT OF COLUMBIA DELEGATE TO THE U. S. HOUSE OF REPRESENTATIVES

Mr. FAUNTROY. Thank you so very much, Senator. Let me begin by commending and thanking you for the very clear and lucid explanation of article 1, section 8, clause 17, which gives to the Congress exclusive authority over the affairs of the District of Columbia, and it allows me to comment that for the past 10 years the Congress has delegated that authority to a locally elected mayor and city council who have exercised that authority with such care that as you point out, more than 800 pieces of legislation have passed without congressional veto. Indeed, the local government is batting 99.7 percent in terms of its stewardship in carrying out the delegated responsibilities of the Congress.

Let me also say as the Member of the House of Representatives who represents more people than any single Member of the House, and who represents more people than elect 14 of your colleagues, because there are more taxpaying citizens in our Nation's Capital than reside in 7 States, I am very pleased to be here, to have this opportunity to share with you and the members of this subcommittee, my perspective of the impact on the District of Columbia—past, present, and future—of the decision by the U.S. Supreme Court in *INS.* v. *Chadha.*

Last June, Mr. Chairman, when *Chadha* was handed down by the Court, many in the District of Columbia hailed the decision as a gentle rain, a new and fresh beginning. It was believed that as a result of that decision the District's legislative process would be free from the burden of the congressional veto. Instead, for the District, *Chadha* has been like acid rain, threatening to choke its very lifeline.

All D.C. laws passed since Home Rule stand in a shadow of doubt which has prompted a proliferation of lawsuits, each case implying that the current government is lawless. The District is unable to access the private bond market and must continue to borrow long term from the Federal Treasury, a state of affairs which is both expensive and unwanted by the District as well as the Federal Government. Some criminal cases are not being prosecuted because of the *Chadha* cloud over District laws, and the situation promises to get worse unless legislative action is taken to excise the District from the taint of *Chadha.* The future bodes even more nightmarish scenarios. So long as *Chadha* stands, unchallenged by legislative intervention, the District will be a manacled government. Beginning in fiscal year 1985 and beyond, the District will have no source of long-term or short-term financing. While the District has been working diligently to get itself into the municipal bond market, in the wake of *Chadha* it cannot secure an "unqualified" legal opinion from bond counsel. Housing finance agency bonds and other bonds, ready for marketing, have been stalled by the decision. At the same time, the Federal Government will no longer provide either bridge loans or capital improvement loans to the District.

Mr. Chairman, this standoff is more than a battle of wills. For the nearly three-quarters of a million taxpaying citizens of the District of Columbia, it is a bread-and-butter issue. More than 300 cap-

ital improvement projects are threatened including school, health, and housing projects. The new municipal office building cannot be completed if the Congress does nothing. The same is true of the District's crosstown water main project, a project incidentally which also affects the water delivery system to Federal buildings. In short, if Congress does nothing, beginning October 1, 1984, there will be no source for the $150 million short-term borrowing and the $155 million long-term borrowing that the District government has relied upon each year to function. It is a situation, in my view, which cannot be tolerated.

Following the decision, members of the House Committee on the District of Columbia met with city officials, constitutional experts, staff from the Senate and from the House Rules Committee, and arrived at a consensus that arguably *Chadha* applied to the District of Columbia and that its impact could be uniquely troublesome. This view, that *Chadha* affects the District, was reinforced in the opinion of one of the Justices of the Supreme Court. In his dissent, Justice White listed 56 acts of Congress which would be invalidated by the Court's decision, and the D.C. Home Rule Act was among them. A more comprehensive list of 207 congressional veto provisions which the Department of Justice submitted to Congress as failing the test for constitutionality also included the Home Rule Act, and, the Congressional Research Service in a special report issued July 5, 1983, concluded that the legislative veto provisions of the D.C. Home Rule Act were suspect under *Chadha*.

Because of the weight of opinion that *Chadha* affected the District and because of the unique and troublesome burdens the decision presented, the Committee on the District of Columbia acted quickly to provide legislative relief. We passed, and the House ultimately passed, H.R. 3932, a straightforward proposal containing basically technical amendments to the D.C. Home Rule Act, designed to conform to the mandates of *Chadha*.

The basic thrust of H.R. 3932 is as follows: in each instance in the D.C. Home Rule Act where resolutions of disapproval are provided for, whether simple or concurrent, they are stricken and in their place is inserted the requirement for joint resolutions. The import of this change is that to reject an act of the D.C. Council and Mayor, the Congress must do so by an affirmative act which must then be presented to the President.

H.R. 3932 does not eliminate congressional oversight of District legislation. It does not reduce the time for congressional review. Indeed, with presentment to the President, it has the potential of increasing the time for congressional review. And it does not change the manner in which the House Committee on the District of Columbia functions in the event the Congress chooses to involve itself in acts of the D.C. government.

Mr. Chairman, I should quickly note that H.R. 3932 has never been viewed as the final reform to the District's legislative process. It is, at best, a band-aid remedy aimed at providing immediate relief to a pressing problem.

Despite the sense of urgency about which I believe none can argue, the Justice Department apparently seeks to take advantage of the situation and to impose its view on the people of Washing-

ton, DC. If Justice has its way—that is, if the Department of Justice has its way——

Senator MATHIAS. There shouldn't be any difference, Mr. Fauntroy.

Mr. FAUNTROY. I am glad you picked up the point, Mr. Chairman. But if the Department of Justice has its way, we would transcend the muddy waters of history, take a giant leap backward and recreate the largest city council in the United States. If the Department of Justice has its way, the 535 Members of this mammoth body known as the Congress of the United States would once again be steeped in debates over whether or not kite flying should be criminal in the District of Columbia. If Justice has its way, from time to time, the critical consideration by the Congress over Nicaragua, Lebanon, the tax bill, the deficit, and other measures of national import will have to take a back seat while purely local matters are bantered about.

Mr. Chairman, I would hope that the wisdom and vision that you and others have shown over the years will prevail. I would hope that your determination to do what is right will overcome the Justice Department's determination to control. I would hope that the Senate pass S. 1858 so that differences between that bill and H.R. 3932 can be worked out in conference. Better still, if the Senate passed H.R. 3932, we could accommodate the differences in separate legislation.

There are nearly 700,000 Americans who pay taxes, who fight and die in our wars, and who shoulder all the burdens of citizenship—who are, this day, relying upon you, Mr. Chairman, Senator Eagleton, and others, to carry the torch for us. We have no Senators of our own.

Acid rain carries destruction invisibly. No one could see the destructive impact of *Chadha* when it first came down. Now that we know its implications, we must act. I would hope, Mr. Chairman, that you, on the completion of this hearing, will move speedily to resolve this so that we may move on in the resolution of this matter as we prepare to deal with full budget authority for the District government, an automatic Federal payment, and full voting representation in the U.S. House and Senate as well.

Senator MATHIAS. Thank you very much. It is clear in your mind, I hope, as it is in mine, that Congress has to take action in the absence of some agreement between the municipal government and the Federal administration. Is that not so?

Mr. FAUNTROY. That is absolutely the truth, Mr. Chairman.

Senator MATHIAS. And if we don't act, then the burden is going to be on our shoulders because that is where the Constitution places that burden. And, so we can't wait for the Mayor to do something or for the President to do something. We have to move. If we don't move, and the kind of consequences that you very accurately predict ensue, then the fault would be ours.

Mr. FAUNTROY. And this is a matter, Mr. Chairman, that is of grave concern to the citizens of the District of Columbia who are quite proud of our home rule experience these past 10 years, and who in a number of local criminal matters have had a cloud cast over the prosecution of those accused of crimes already.

Senator MATHIAS. And as you point out, the home rule process has been demonstrably successful. I have calculated here the percentage of home rule enactments that had been nullified by act of Congress—2 out of 800. I was always weak on arithmetic, but I think that comes to 0.25 percent, which is a very small margin of error.

Mr. FAUNTROY. Very small margin of error, and a great batting average, 99.7. In fact, if I could bat that in other areas, or if you could bat that well——

Senator MATHIAS. I might get a job with the Orioles.

Mr. FAUNTROY. That is right.

Senator MATHIAS. And they would need me.

Mr. FAUNTROY. And they would need you now, quite frankly.

Senator MATHIAS. One question that I think is important, both for the House and Senate to consider, is this. Mayor Barry and the chairman of the city council, Mr. Clarke, recently wrote a letter regarding a compromise provision that both of them support. The Mayor will be testifying in a few minutes and will update his views on this subject. But as you may recall, this is a provision which was in the bill that the House considered last fall, and which was dropped from the House version of the bill before it was passed. The issue revolves around the effect of *Chadha* on the use of legislative vetoes at the Mayor-city council level. Now, since there is apparently agreement between the Mayor and the chairman of the council, what would your position be as to the inclusion of that provision in a final *Chadha* bill?

Mr. FAUNTROY. Mr. Chairman, to the credit of both the Mayor and the chairman of the council, a compromise provision was worked out, and I am prepared to support that, obviously, and to indicate, however, that my primary concern is to get this measure passed and signed into law so that we can move ahead with our bond issues, and in any event we are disposed to take care of the question which the chairman of the council raised about the legislative veto process at the local government level. I am confident we are going to resolve that.

Senator MATHIAS. Do you think that you can persuade Members of the House—let me say that I don't have total confidence that I can persuade Members of the Senate, but what is your feeling about the attitude of Members of the House to their responsibility in this matter. Is it still going to be a question of waiting for the President to give ground, or waiting for the Mayor to give ground, or waiting for this one or that one or the other?

Do they really understand that the buck has stopped right here on Capitol Hill, and if there is trouble in the District of Columbia, or financial problems, those problems will be the direct result of Congress' failure to act?

Mr. FAUNTROY. Mr. Chairman, to the credit of the House, when this *Chadha* question was raised and our District Committee held hearings on it and shared our position with the Members of the House, they moved quickly to pass H.R. 3932, and I assure you that if you move as quickly in the next few weeks to do so, the House will concur with either formulation—either passage of our measure as passed by the House, or with the need for the adjustments

which you have referenced here that have been suggested by the Mayor and chairman of the council.

Senator MATHIAS. Well, that is encouraging, and I appreciate your being here today.

I am sorry that Senator Eagleton has been delayed longer than he anticipated. He may have some questions, and I hope that you will agree to respond in writing to any questions that he may propound, and we will make that a part of the record.

Mr. FAUNTROY. I will be very happy to.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Senator MATHIAS. Thank you for being here.

Our next witness is the Honorable Marion Barry, the Mayor of the District of Columbia.

Mr. Mayor, I don't have to tell you what the problem is. We will be glad to hear your solution.

TESTIMONY OF MARION BARRY, JR., MAYOR OF THE DISTRICT OF COLUMBIA, ACCOMPANIED BY PAULINE A. SCHNEIDER, DIRECTOR OF INTERGOVERNMENTAL RELATIONS, AND ALPHONSE HILL, DEPUTY MAYOR FOR FINANCE

Mr. Barry. Thank you, Mr. Chairman.

I want to, first of all, thank you for having this hearing and for bringing this issue right to the focal point of where it belongs and that is to get some action on how we rectify the problems facing us created by the Supreme Court's ruling in *INS* v. *Chadha*.

Mr. Chairman, let me just express my great appreciation and the appreciation of an entire D.C. government for your strong support to resolve this matter and for your strong support of our efforts to govern ourselves. You have been in the forefront of that movement, and we certainly appreciate it. You have done it not for any reason except that it is right to do.

In terms of the question that is before us, let me say upfront that the executive and legislative branches of the District government come here today united in our support of legislation to correct the problems created by the Supreme Court decision.

Earlier, as you know, the Council chairperson and myself had some minor differences on how to address the local legislative problems created by the court decision. As you alluded earlier to Mr. Fauntroy, those differences have been resolved. In a letter we sent to you, Senator Eagleton, and members of the House District Committee on February 28, 1984, we offered language to be included in section (1)(b)(2) of S. 1858 to address this issue.

I would like to enter into the record a copy of that letter which states that there is no difference of opinion between the executive branch and legislative branch of the D.C. government.

Senator MATHIAS. Without objection, we will insert into the record at this point a copy of that letter.

[The letter referred to follows:]

THE DISTRICT OF COLUMBIA,
Washington, DC, February 28, 1984.

Hon. CHARLES MCC. MATHIAS, Jr.,
Chairman, Subcommittee on Governmental Efficiency and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are pleased to inform you that we have agreed to the following language to be included in section 1(b)(2) of Senate Bill S. 1858 (section 1(b)(2) of H.R. 3932 as introduced):

> The last sentence of section 412(a) of such Act is amended to read as follows: "Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove proposed actions of a kind historically or traditionally transmitted by the Mayor, the Board of Elections, Public Service Commission, Armory Board, Board of Education, the Board of Trustees of the University of the District of Columbia, or the Convention Center Board of Directors to the Council pursuant to an act. Such resolutions must be specifically authorized by that act and must be designed to implement that act."

The language "of a kind historically or traditionally" is designed to reference a conception of the current uses of Council approval or disapproval by resolution as exemplary of the kinds of approval or disapproval to be specifically permitted by the Charter. The language would include within the ambit of the provision those actions which are now approved or disapproved by Council resolution but is not meant to cover only those specific actions. We attached a list of current provisions of law which involve approval or disapproval by resolution as exemplary of the kinds of review contemplated by the compromise language. We urge that this letter and this list be included in the legislative history of this amendment.

It is our hope that Senate Bill S. 1858 can move forward in an expeditious manner so as to quickly remove the cloud over the Self-Government and Governmental Reorganization Act, created by interpretations of the *Chadha* decision.

Sincerely,

MARION S. BARRY, Jr.,
Mayor.

DAVID A. CLARKE,
Chairman, Council of the District of Columbia.

STATUTES WITH COUNCIL REVIEW PROVISIONS

P.L. 97-257—Transfer of appropriated funds.
D.C. Code § 1-242(12)—Reorganization Plans.
D.C. Code § 1-608.1(e)(3)—Exemptions from Residency Requirements.
D.C. Code § 1-612.6—Career and Expected Service Pay Package.
D.C. Code § 1-612.7(d)—Executive Service Pay Rates.
D.C. Code § 1-612.8(b)—Boards and Commissions Compensation.
D.C. Code § 1-612.11—Educational Service Pay Package.
D.C. Code § 1-618.17(j)—Labor Relations Settlements.
D.C. Code § 1-633.7—Confirm Executive Service Nominees.
D.C. Code § 1-1150.1—Minority Contract Rules.
D.C. Code § 3-207.3—Public Assistance Complements.
D.C. Code § 4-301—Major Changes in Fire Department.
D.C. Code § 5-504 note—Construction Codes Adoption.
D.C. Code § 5-806(c)(1)—Urban Renewal Property Offering Documents.
D.C. Code § 5-811—Urban Renewal Plan Changes.
D.C. Code § 5-818(b)—Advance Funds for Urban Renewal Projects.
D.C. Code § 5-902(c)—Community Development Program and Amendments.
D.C. Code § 9-603(c)—Convention Center Board Rules.
D.C. Code § 24-442—Corrections Dept. Regs. for Penal Institutions.
D.C. Code § 33-511(b)—Schedule of Controlled Substances.
D.C. Code § 36-702(f)—Youth Employment Act Regulations.
D.C. Code § 40-605(a)(1)—Mayor's Order to Modify Civil Traffic Fines.
D.C. Code § 43-1806(c)—Cable TV Rules.
D.C. Code § 45-1924(g)—Real Estate Licensure Regulations.
D.C. Code § 45-2204(a)—Home Purchase Assistance Fund Rules.
D.C. Code § 46-114(b)—Unemployment Compensation Bd. Regs..
D.C. Code § 47-308—Annual Budget Structure Resolution.
D.C. Code § 47-309—Borrowing Funds from U.S. Treasury.
D.C. Code § 47-363(e)—Reprogramming Requests.
D.C. Code § 47-364(a)—Non-Offsetting Budget Modifications.

D.C. Code § 47-385—Grant Applications and State Plan Approvals.
18 DCMR 2412.8—Residential Permit Parking.

Mr. BARRY. Also, Mr. Chairman, before I continue, I would like to indicate that I have with me Ms. Pauline A. Schneider, director of the Office of Intergovernmental Relations, and to my left is Alphonse Hill, deputy mayor for finance.

Senator MATHIAS. We are pleased to have both of you here today.

Mr. BARRY. Let me say, Mr. Chairman, that the District government is also united today, along with our congressman, in its resolve to resist efforts by the Justice Department to increase its control over criminal justice issues in the District of Columbia.

We come before you to ask that this committee consider the legal and financial problems created by the court decision and the impasse we find ourselves in; to evaluate the Justice Department's position in the context of home rule for the District; and to urge you to take immediate action to resolve this most urgent problem.

Mr. Chairman, I agree with your statement that the Congress must act. The Congress has ultimate responsibility in this matter, and we have waited long enough to try to reach some agreement and I would urge you to act expeditiously.

We understand what the Supreme Court meant when it ruled in *Chadha*. There is considerable debate as to whether it applies to the District. The city has taken a position that it does not. Indeed, two superior court opinions agree with the city's argument and recently ruled that *Chadha* does not apply.

Even if one accepts the argument that it does, the Department of Justice and the city are in agreement that the veto provisions of our charter are severable and the remainder of the act is valid. However, in order to be cautious and on the safe side, fiscal responsibility requires that the city seek legislation to clarify this question.

It was in this context that the city sent legislation to the Congress last September—legislation discussed in advance of submission with both House and Senate staff.

As you know, Mr. Chairman, the House took the lead and passed H.R. 3932 in October. They did this even without, as I recall, a roll-call vote. That indicates the confidence that Members of the House, first of all, have in the House District Committee. Second, the confidence it has in local government and finally its commitment to home rule.

However, on November 15, 1983, after H.R. 3932 had been passed and after considerable discussion in both the Senate and the House committees, the Department of Justice, at the 11th hour opposed S. 1858 unless it was amended to provide for affirmative action by both Houses of Congress of council-passed criminal code legislation.

Mr. Chairman, it is disturbing that this issue was raised by the Department that late in the game. They knew the issue, and we don't know why they didn't come forward earlier to at least express some concern.

As you know, Mr. Chairman, the District of Columbia has struggled for nearly 100 years for the right to govern itself. In 1973, with your help, and the help of Senator Eagleton and others and some of our friends in the Senate and the House, the city was granted a measure of home rule.

As you will recall, there was some difference of opinion about granting the city authority to legislate in the criminal justice area. This authority was not granted to the city for 2 years after Home Rule became effective to allow the Law Revision Commission time to complete its work.

Mr. Chairman, let me just say that since the city has been granted full authority to legislate on criminal matters, we have legislated in a very responsible manner. We have not passed radical measures which would in any way endanger the life, health, or safety of local residents or Federal officials. Mr. Chairman, we have demonstrated beyond a reasonable doubt that we know how to govern this city, that we have the interest of the National Government at heart, and certainly the interests of our local citizens at heart. We can act responsibly.

Even with the sexual assault bill, which, in our view, was more of a reform measure than most States have passed, it was not irresponsible legislation, even though it was overturned by a one-House veto.

There are those in the Reagan administration who would argue that there is a Federal responsibility to ensure public safety and security in the District of Columbia and that this responsibility cannot be delegated. Mr. Chairman, this argument has little merit. First of all, Mr. Chairman, there are Federal laws which protect the President, Members of Congress, Members of the Cabinet, diplomats, and Federal properties. These laws cannot be changed by the District of Columbia and are enforced by the Federal Government. Lately I have heard another argument that we have to be concerned about the embassies and the chanceries located here. Of course, we have to be, and we are.

Mr. Chairman, as you know, the embassies are guarded daily by the uniform branch of the Secret Service and with the cooperation of the Metropolitan Police Department there is good protection for our diplomats and our foreign visitors. In fact, we have spent taxpayers' money to assist—local taxpayers' money—in this protection. I don't think you will find any foreign government official who will not testify that we have been supportive of their efforts to be safe and secure in the carrying out of their official business in this great city of ours.

So, we think that we are in a position to say this. The U.S. attorney's office currently prosecutes all major crimes in the District, whether they are violations of local laws or Federal laws. Mr. Chairman, as you know, the D.C. government and our Congressman have gone on record as opposing this arrangement. It is the only jurisdiction in America where the U.S. attorney prosecutes local crimes. We support the transfer of these prosecutorial and judicial functions to the District of Columbia.

However, this is not before you at this time.

Also, Mr. Chairman, as you very well know, the Congress of the United States has plenary authority over the District of Columbia. Should the city pass legislation or act in a manner which offends the Congress or threatens the national interests, the Congress can, within a matter of days, pass legislation to correct the offense. What the Reagan administration seeks is power greater than that of the Congress.

Article One of the Constitution is very clear. It gives Congress the authority to legislate over the District of Columbia.

The thrust of the administration's position on this issue is contrary to its oftenstated policy of new federalism. Mr. Chairman, I am a member of the board of directors of the National League of Cities, a member of the Policy Committee of the Conference of Mayors, and I am the new president of the National Conference of Black Mayors, and every time Reagan administration officials come before those bodies, they ask us to support their new federalism. They repeatedly indicate that local issues should be decided by local people at the local level. Now we find the inconsistency between that position on the issue of home rule for the District and local resolution of local problems is evident. I don't understand the inconsistency.

To accept the administration's position would dramatically change the relationship between the Congress and the District of Columbia. Over the past few years, Mr. Chairman, the course of that relationship has been in the direction of Congress transferring greater home rule authority to the District, not less.

Mr. Chairman, as you recall, our budget process goes much smoother now. In the past, the Congress has been inclined to get involved with line-item vetoes and look at the great issues facing the District.

The Justice Department's proposal for a more active role in local affairs of the District, in our view, is an assault on home rule. It is an assault on new federalism. It is contrary to the Reagan administration's stated national policy, and it is an intrusion into the responsibilities of the Congress. I say this, Mr. Chairman, because we feel strongly about this matter.

It is also important to point out to this committee the consequences, both the financial and legal, of this disagreement.

The mere possibility that a court would find our Home Rule Act unconstitutional has caused the District's bond counsel, Sidley & Austin, to decline to issue an unqualified opinion with respect to the city's bonds and notes. This has created, Mr. Chairman, considerable problems for us.

First of all, we have to have short-term borrowing, as other cities have to. There are valleys and peaks in our income and our expenditures, and most States have interim borrowing authority to level it out. In the past 4 years since I have been Mayor, we have gone to the Treasury to borrow in an interim manner, and each time we have paid back the complete amount on September 30. Again, this demonstrates our ability to be financially and fiscally responsible.

However, because of the *Chadha* situation, we were unable to make that arrangement this year, and we had to go to a private financial institution to borrow $150 million in short-term revenue anticipation notes. This was a very complex arrangement where the city had to make certain arrangements, with the Treasury that would require the Treasury to repay that loan in the event of a *Chadha* challenge.

The city would have then to repay the loan plus administrative fees to the Treasury. We think this is an undue financial burden on our citizens who now pay 80 percent of our local budget.

Mr. Chairman, we have been trying to house our citizens in decent, safe, and sanitary housing. As you know, the mortgage subsidy bond legislation expired on December 31, 1983. The District was able to sell $30 million in single-family housing bonds in late December. The money from those bonds is in escrow. Unless remedial legislation is enacted by June 1, 1984, the date the note matures, the District must absorb the costs associated with this sale, which would be approximately $400,000. Moreover, Mr. Chairman, we would lose $30 million of money for badly needed single-family housing.

Also, Mr. Chairman, the Treasury Department has indicated that they will not allow the District to borrow funds to finance capital projects after September 30, 1984. Over the years, the city has had no other source for capital borrowing. There are hundreds of millions of dollars worth of projects in progress. Projects planned and those under construction will be abruptly halted unless additional sources of funding are developed.

Mr. Chairman, we want to go to the bond market for our capital projects because we could get the money at a cheaper interest rate. We are paying more to the Treasury in interest rate than we would pay on the private market.

Also, Mr. Chairman, we are trying to develop our city economically. We have over $100 million of industrial revenue bonds, not only for city projects that are private sector projects but for great organizations such as the Girl Scouts, our hometown team national champions, Georgetown University, and the National Association of Retarded Citizens. The projects these bonds are to fund would result in hundreds of jobs for the city. These bonds cannot be issued because, without an unqualified opinion from bond counsel, they would not be marketable.

Mr. Chairman, then there exists the legal problem created by the decision. There are over 50 criminal cases which raise the *Chadha* question, as does the U.S. attorney and corporation counsel to have to continually address tangential legal issues. These could be resolved by quick enactment of S. 1858.

Mr. Chairman, the U.S. attorney and Corporation Counsel need to spend full time on prosecuting criminal acts and civil acts in the District of Columbia. They should not have to spend that time on these tangential issues.

Mr. Chairman, I would like to indicate that we have sought a compromise in this matter. We worked diligently with members of the Department of Justice. I have met personally with the Acting Attorney General, D. Lowell Jensen, trying to come to some compromise, trying to work out a solution that does not alter or does not compromise our principal position on home rule but which at the same time addresses the concerns of the Department of Justice.

We offered two proposals. On November 17, 1983, we offered the so-called quick-fix proposal which would have simply ratified and deemed valid previous actions of the Council of the District of Columbia and would have added a severability clause to the Home Rule Act. Bond counsel indicated that they would have given us an unqualified opinion if that approach had been taken.

That approach was rejected by the Department of Justice. That approach also was not popular with some Members of the Congress.

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They felt we should take on the entire issue. This is what we tried to do.

Then we offered a second compromise proposal after this first one was rejected by the Department of Justice, and that is that we wanted to extend the review period for criminal code legislation to 60 days and provide for expedited consideration of resolutions of disapproval. This would allow Justice ample time to review the legislation and have a joint resolution of disapproval introduced should it find the District act objectionable.

It also addressed head on Justice's concern that a disapproval resolution could not get out of the House or Senate District Committees. This proposal, however, was also rejected.

I would like to submit for the record a copy of the Justice Department's letter rejecting that option.

Senator MATHIAS. Without objection, that will be made a part of the record at this point.

[The letter referred to follows:]

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSOCIATE ATTORNEY GENERAL,
Washington, DC, March 14, 1984.

Hon. MARION S. BARRY, Jr.,
Mayor, District of Columbia, District Building, Washington, DC.

DEAR MAYOR BARRY: As I stated in our telephone conversation, the Department cannot support your draft amendments to the Home Rule Act. As you know, our original objection was to a resolution of disapproval mechanism. The addition of an expedited consideration provision to a resolution of disapproval authority would not accomplish the Department's objective of retaining some role in the Congressional review of District of Columbia criminal justice legislation—a roll that the Department must play as long as there is a U.S. prosecutor, a U.S. Marshal, U.S courts and U.S. judges handling local criminal justice matters.

As a counterproposal, I would like to put forward a suggestion that has already been advanced by others. We would support a requirement that District of Columbia amendments to the criminal justice provisions of the D.C. Code be reviewed by the Attorney General for a period certain during which the Attorney General could notify the Congress that the Administration opposes a specific amendment. Such notification would then require that the proposed amendment be subject to a resolution of approval. Of course, District of Columbia Council amendments to D.C. Code provision other than the criminal justice titles of the D.C. Code would be subject only to a resolution of disapproval.

It is my judgment that this formulation (Attorney General notice re D.C. Council enactment triggers Congressional resolution of approval) is the proper compromise between our positions. Under this mechanism, the District of Columbia would be closer to its home rule goals than before, yet the continuing federal interest in the District of Columbia criminal justice system would be protected.

I look forward to your reply.

Sincerely,

D. LOWELL JENSEN,
Associate Attorney General.

Mr. BARRY. So, Mr. Chairman, our efforts to compromise seem to have failed.

The District is being forced to make what I would describe as a "Sophie's Choice": We are being told by some in the Reagan administration that we must choose between self governance and financial collapse. We are being told that unless we are willing to grant the Federal Government a direct hand—and the President—in shaping our criminal legislation they will force us into bankruptcy.

Mr. Chairman, I believe the time has come when the Senate must act. It has been nearly a year since the Supreme Court has rendered its decision, almost 8 months since we first submitted leg-

islation to this body. No one could have predicted last June what the potential impact of that decision would be. Today, Mr. Chairman, we are faced with the stark reality of over $800 million in bond financing is tied up because the Justice Department insists on tightening its string, its stranglehold on the city by being our prosecutor, judge, and jury with respect to criminal legislation.

In this chamber today are many representatives of business, labor, education, charitable, and religious organizations, both local and national, who support the city's position and say to you through their written statements that they do.

Mr. Chairman, I would like to introduce for the record written statements from the Board of Trade, the Federal City Council, the Metropolitan Council of the AFL–CIO; the American Federation of Government Employees, signed by the national president, Kenneth Blaylock; Communications Workers of America; Consortium of Universities; Lazard Frères & Co., who is our financial adviser; the Fraternal Order of Police, our outstanding union which represents police officers in this city; the District of Columbia Bankers Association; Sidley & Austin, our bond counsel, an internationally recognized law firm; our Housing Finance Agency; and others who have come to our aid.

Senator MATHIAS. Without objection, that material will be placed in the record.[1]

Mr. BARRY. Mr. Chairman, they have done this because they understand the issues before us. This body cannot and must not let the national administration bankrupt our city. You cannot and must not let major capital projects, such as our crosstown watermain, municipal center, school renovations, and others come to a halt. We must be permitted to control our own destiny.

Mr. Chairman, and members of the committee, the time has come for the Federal administration to halt its efforts to turn back the clock. We are managing our fiscal affairs in a responsible, carefully planned, and prudent manner. We have developed new practices and procedures to avoid the budgeting and management problems that we found when we came into office. We are whittling away at our awesome deficit that accumulated while this city was controlled by the Congress.

Mr. Chairman, we also have been confronted with another new proposal, not really new, but it has surfaced again and I think I ought to address it up front, and that is whether or not the city would accept the interposing of the Attorney General into our legislative process. We reject that approach.

First of all, we reject it because it is too arbitrary. The Congress ought to be the body if anyone is to review our legislation, and the President would have an opportunity to influence the Congress through lobbying and asking for support on a resolution, so we would not like that to be considered as a meaningful compromise. It is really a step backward. We support you and your efforts to, hopefully, as a compromise, get enacted the 60-day compromise.

Finally, Mr. Chairman, if we had our way, as you very well know, we would not like to even be appearing before this body to ask you to work on our behalf because we would like to have com-

[1] The statements begin on p. 74.

plete home rule, complete judicial autonomy, complete legislative autonomy, complete financial autonomy, complete freedom to manage our affairs.

On the other hand, we recognize the legal responsibility of this committee. We recognize your diligent efforts and your working for us, and I am sure that you would rather in some instances be working for the citizens of Maryland, but you have taken time to work for us, too. And, we appreciate that. We urge you to act quickly. We urge you to lobby your committee members, and we would accept the 60-day compromise and we would also urge the House to accept Mr. Clarke's and my compromise at the local level.

Thank you.

Senator MATHIAS. Thank you very much, Mayor Barry. I appreciate your generous words. I think you will recognize from what I have already said this morning that I understand that the ball is in our court in the Congress and that the Constitution makes it totally clear that we have the responsibility to act here; and that whatever failures or disagreements or positions which may be taken by you or by the President or by the Attorney General or by anyone else, the Congress has the responsibility to act. I think that we have to live up to that responsibility.

The ideal solution is, of course, for you and the administration to work out a compromise which is mutually agreeable and which can be ratified by the Congress. That will take care, hopefully, of all the interests concerned. But, if that does not happen, then I think our duty is very clear, and we will simply have to act on that duty.

Of course, one of the important steps toward a compromise was taken by yourself and Mr. Clarke and expressed in a letter which you sent to me on February 28 of this year. We have already inserted a copy of that letter into the record of this hearing.

Mr. Mayor?

Mr. BARRY. Mr. Chairman, In that letter, we indicated to you that we have agreed to the following language and it is signed by myself and the chairman of the council and it has attached to it statutes with council review provisions as a guide to the legislative history.

Senator MATHIAS. This really resolves what became known as the mini-*Chadha* problem, doesn't it?

Mr. BARRY. Yes, sir.

We are in complete agreement. Again, that demonstrates that the executive branch of government at the local level and the legislative branch can be flexible and work together.

Senator MATHIAS. Just so we are sure that everybody is working on the same premise, I am wondering if you would explain very briefly just how you think this would work. What is your vision of how this would work?

Mr. BARRY. Mr. Chairman, what we have indicated is the last sentence of section 412(a) of such act as amended read:

> The resolution shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character and (2) to approve or disapprove proposed actions of the kind historically and traditionally transmitted by the Mayor, the board of elections, the Public Service Commission, the armory board, the board of education, the Board of Trustees of the University of the District of Columbia, the convention center board of directors to the council pursuant to an

act. Such resolutions must be specifically authorized by that act and must be designed to implement that act.

I will explain the meaning, Mr. Chairman. All of my executive appointments to the cabinet and the department have to be confirmed by the council. I support that direction. There are certain boards and commissions that have to be confirmed by the council. I support that. The executive service pay rate, that is, the level of pay for my cabinet has to be disapproved by the council. And after a certain period of time, it goes into effect. I support that. The career and exceptional service pay package—every year we submit a plan, a pay plan to the council. If during a certain period of time it is not disapproved, it goes into effect. There is a whole range of activities in that area where we are in agreement and they ought to be legitimately reviewed by the council and can be disapproved by resolution.

Moreover, it means that if in a particular act where in the act itself it establishes a resolution process—for instance, the act establishing the Office of Cable TV, for instance, had in it a procedure that the council by resolution would confirm the executive director, and that is the kind of direction that we have come to and that is what we agree on at the local level.

Senator MATHIAS. It is my judgment that the members of this committee would be willing to include the language you suggest in the bill when we report it to the full Senate, and work to retain it in the final language of the bill through the conference process.

Would that process have your support?

Mr. BARRY. It would. In fact, we have discussed this language with leaders of the House District Committee and Mr. Fauntroy and others, and we have been advised that if this is the only problem facing us that is going to stop us from moving ahead, that they would accept that proposal.

We would urge them to do so.

Senator MATHIAS. You have indicated that you are willing to compromise on this whole matter because of the vital importance to the future of the District and in order to avoid any kind of a financial crunch that might result.

Do you have any particular route of compromise to propose at this point?

Mr. BARRY. Mr. Chairman, the way I view compromise is the same way I view partnerships. Partners have to work together, and that is not 90 percent of one giving and 10 percent of the other giving. Quite frankly, I think the District government has gone way beyond where we ordinarily would have gone. We support the bill in the House with the amendments that I just suggested to you earlier. We support your bill that the Senate has out of committee. And to move off of that position and to then go back to a disapproval resolution in the criminal code area, which is different from the general disapproval resolutions that we have supported in other areas, in our view is quite a compromise. We have not seen that much movement on the part of the Justice Department. They have always wanted to keep great control over the criminal codes. Incidentally, Mr. Chairman, the criminal codes, as you know, are local laws from petty larceny to assault and other kinds of situations, and there are some of the civil codes in there, too; but I have

not seen much movement on the part of the Justice Department, so I think that we have gone about as far as we can go.

The Justice Department has always wanted to make you all work to support us, that is, if we pass a law that changes the criminal code, Justice's position has been that they want a resolution of approval which means that they want you and other Senators and Congressmen to work to get approval of our actions, which is really just 180 degrees away from what we started from.

Many of you had some concerns about how the Congress could retain its legal jurisdiction and yet not any fewer in local control. The present process has worked very well. As you mentioned, only two out of 800 laws have been disapproved. It was the *Chadha* decision that brought us to this point of looking at a change in how we relate. The Justice Department's proposal would take us away back beyond where we are now.

I have to work on the council. That is not easy sometimes to get my piece of legislation passed. The council sometimes has to work on me. That is not always easy. That is to get me to support their pieces of legislation. And, once that is done, I sign it, and it comes up here and we all have to come up to Congress to work to get you all to agree—100 Senators, 435 Congresspeople who can vote.

So, the Justice Department's proposal has taken us back before 1974, before we had the charter. We think we have compromised. I think it is a fair compromise. It allows them a chance to come up, to object, and allows them a chance to get to the floor expeditiously in case they can't get it out of your committee or Mr. Dellums committee. I think it is a fair compromise.

On the other hand, assuming that—and they usually say that this government is responsible and I appreciate that, that this mayor is acting responsibly—and they say, "What about the future? Suppose you get some other government that is not as responsible?"

The Congress, in less than a day, can enact any legislation it wants affecting the District of Columbia.

Senator MATHIAS. I thank you very much for being here, Mayor Barry, not only for your testimony today but your cooperation and willingness to sit down and talk with us on a wide variety of subjects.

It is a pleasure to have you.

Mr. BARRY. Thank you, Mr. Chairman.

Again, I would just urge that we move expeditiously with the 60-day compromise. That is our strong recommendation.

Senator MATHIAS. I hear you.

[Mayor Barry's prepared statement follows:]

PREPARED STATEMENT OF MAYOR MARION BARRY, JR.

Mr. Chairman, members of the subcommittee, thank you for this opportunity to testify today on S. 1858, legislation designed to remedy problems created by the Supreme Court's ruling in *Ins* v. *Chadha*.

Mr. Chairman, let me say up front that the executive and legislative branches of District Government come here today united in our support of legislation to correct the problems created by the Supreme Court decision. Although the council chairman and I had differences in the past on how to address the potential local legislative problem created by the Court decision, we have resolved those differences. In a letter we sent to you, Senator Eagleton, and members of the House District Commit-

tee on February 28, 1984, we offered language to be included in section (1)(b)(2) of S. 1858 to address this issue. I offer a copy of that letter for the record.

The District Government is also united today in its resolve to resist efforts by the Reagan administration to increase its control over criminal justice issues in the District of Columbia. We come before you and ask that this committee consider the legal and financial problems created for the District by the Court decision and the impasse we find ourselves in; evaluate the Justice Department's position in the context of Home Rule for the District; and take immediate action to resolve this most urgent problem.

I think we all understand what the Supreme Court said in the *Chadha* decision. There is considerable debate as to whether it applies to the District. The city has taken the position that it does not. Indeed, two superior court judges agree with the city's arguments and recently ruled that *Chadha* does not apply to the Home Rule Act. Even if one accepts the argument that *Chadha* does apply to the District, the Departent of Justice and the city are in agreement that the veto provisions of our charter are severable and the remainder of the act is valid. However, caution and fiscal responsibility require that the city seek legislative clarification of the questions raised by the decision.

It was in this context that the city sent legislation to the Congress last September. It was legislation discussed in advance of submission with both House and Senate staff. As we know, the legislation passed the House as H.R. 3932 in October. However, on November 15, 1983, in a letter to this committee chair, Senator William V. Roth, Jr., the Department of Justice opposed S. 1858 unless it was amended to provide for affirmative approval by both Houses of Congress of council passed criminal code legislation.

The District of Columbia struggled for nearly 100 years for the right to govern itself. In 1973, with your help, Mr. Chairman, and the help of Senator Eagleton and some of our friends in the Senate and House, the city was granted a measure of home rule. It is true that there were some differences of opinion about granting the city authority to legislate in the criminal justice area, and this authority was not granted to the city for two years after home rule became effective to allow the law revision commission time to complete its work.

Since 1976, when the city was granted full authority to legislate on criminal matters, we have legislated in a very responsible manner. We have not passed radical measures which would in any way endanger the life, health, or safety of local residents or Federal officials. Despite the fact that the Sexual Assault Act was overturned by a one House veto of the Congress, it was not irresponsible legislation.

There are those in the Reagan administration who argue that there is a Federal responsibility to insure public safety and security in the District of Columbia and that this responsibility cannot be delegated. This argument has little merit for several reasons.

First, there are Federal laws which protect the President, Members of Congress, Members of the Cabinet, Diplomats, and Federal properties. These laws cannot be changed by the District of Columbia and are enforced by the Federal Government.

Second, the U.S. Attorney's Office currently prosecutes all major crimes in the District whether they are violations of local laws or Federal laws. We don't think this arrangement is fair and we are on record as supporting the transfer of these prosecutorial and judicial functions to the district. However, that is presently not the case.

Third, the Congress of the United States has plenary authority over the District of Columbia. Should the city pass legislation or act in a manner which offends the Congress, it can within a matter of days pass legislation to "correct the offense". What the Reagan administration seeks for itself is power greater than that of the Congress.

The thrust of the administration's position on this issue is contrary to their often stated policy of "New Federalism". We repeatedly hear them say that local issues should be decided by local people at the local level. The inconsistency between their position on this issue of home rule for the district and local resolution of local problems is evident.

To accept the administrations position would dramatically change the relationship between the Congress and the District of Columbia. Over the past few years, the course of that relationship has been in the direction of Congress transferring greater home rule authority to the District, not less. What the Justice Department proposes is a more active role in local affairs of the District. Justice's position is an assault on home rule, contrary to the Reagan administration's policy of "New Federalism" and an intrusion into the responsibilities of the Congress.

It is important to point out to this committee what the financial and legal impact of this disagreement has been for the District.

The mere possibility that a court would find our Home Rule Act unconstitutional has caused the District's bond counsel to decline to issue an unqualified opinion with respect to the city's bonds and notes. Four specific problems in the financial area deserve mention. First, because of our inability to enter the market without an unqualified opinion from bond counsel, in January of this year, because Treasury declined to loan us money as is required by section 723(a) of the Home Rule Act, the District was forced to enter into a highly unusual and complex financial arrangement with a money center bank and the Department of Treasury to borrow $150 million in short-term revenue anticipation notes. Under this complex arrangement, if the city is unable to repay the bank because of a *Chadha* challenge, Treasury will pay the bank and the city will repay the loan plus administrative fees to Treasury from certain earmarked real estate tax revenues.

Second, in order to take advantage of Federal mortgage subsidy bond legislation which expired on December 31, 1983, the District sold $30 million in single family housing bonds on December 30, 1983. The money from those bonds is in escrow and unless remedial legislation is enacted by June 1, 1984, the date the note matures, the District must absorb the cost associated with this sale, which would be approximately $400,000.

Third, the Treasury Department has indicated that it will not allow the District to borrow funds to finance capital projects after September 30, 1984. Over the years, the city has had no other source for capital borrowing. There are hundreds of millions of dollars worth or projects in progress. Projects planned and those under construction will be abruptly halted unless additional sources of funding are developed.

Finally, applications are pending with the city for nearly $100 million worth of industrial development bonds. The projects these bonds are to fund would result in hundreds of jobs for D.C. residents and thousands of dollars in revenue for the city. These bonds cannot be issued because, without an unqualified opinion from bond counsel, they would not be marketable.

Equally important is the effect of the stalemate on the judicial system. More than 50 criminal cases raise *Chadha* challenges, as does at least one civil case. Other litigation is expected. It is disruptive to both the U.S. Attorney and corporation counsel to have to continuously address tangential legal issues that could easily be resolved through quick enactment by the Senate of remedial legislation.

It is clear that all affected parties—the District, Congress, and the executive branch—agree that a legislative solution is the preferable approach to resolving our problem. Favorable lower court decisions are insufficient because they do not address in one decision the entire range of issues that need to be addressed and movement through the appeals process to the U.S. Supreme Court for final resolution could take months, even years. Bond counsel has made it clear that either a Supreme Court decision or legislation is necessary before they can issue an unqualified opinion.

Mr. Chairman, we have tried diligently to work this problem out. My staff and I met on a number of occasions with officials at Justice, including most recently, Acting Attorney General, D. Lowell Jensen, trying to come to some compromise.

We offered two proposals. On November 17, 1983 we suggested the so called "Quick Fix" proposal which would simply have ratified and deemed valid previous acts of the council of the District of Columbia, and added a severability clause to the Home Rule Act. It was designed to allow the District to enter the bond market, by addressing the financial aspect of the *Chadha* problem, while leaving any resolution of the criminal issue until a later time. With these two provisions our bond counsel assured me that they could issue the District an unqualified opinion. This proposal met with opposition from Justice and some Members of Congress. The prevailing sentiment was that the entire issue needed to be resolved and that a piece-approach only prolonged the debate.

In the second compromise proposal, I offered to extend the period of review for criminal legislation to 60 days and provide for expedited consideration of resolutions of disapproval. This would allow Justice ample time to review the legislation and to have a joint resolution of disapproval introduced should it find the District Act objectionable. It also addressed head on Justice's concern that a disapproval resolution could get bottled up in the House or Senate District Committee. This proposal, however, was also rejected. I submit for the record a copy of the Justice Department letter rejecting that option. Our efforts at compromise seem to have failed.

The District is being forced to make a Sophie's choice: We are being told by the Reagan administration that we must choose between self governance and financial collapse. We are being told that unless we are willing to grant the Federal Govern-

ment a direct hand in shaping our criminal legislation, they will force us into bankruptcy.

Mr. Chairman, I believe the time has come when the Senate must act. It has been nearly a year since the Supreme Court rendered its decision and almost eight months since we first submitted legislation to this body to correct the problems created by that decision. No one could have predicted last June what the potential impact of that decision would be. Today, we are faced with the starke reality of over one half a billion dollars in bond financing tied up because the Justice Department insists on increasing its stranglehold on the city by being our prosecutor, judge, and jury with respect to criminal legislation.

In this chamber today are many representatives of business, labor, educational, charitable, and religious organizations, local and national, who support the city's position and say to you through their many written statements which I have here and submit for the record, enough is enough. This Body cannot and must not let the national administration bankrupt our city. You cannot and must not let major capital projects such as our crosstown watermain, municipal center, school renovations, and others come to a halt simply because the citizens of the District of Columbia do not have a vote in Congress. We must be permitted to control our own destiny just as every other local jurisdiction in this country can.

About 10 days ago, Mr. Chairman, Americans all across this Nation rushed to the mail boxes, some at the very last moment, to pay their Federal income taxes. The more than 625,000 residents of the District of Columbia paid their Federal taxes, too. As a matter of fact, on a per capita basis, District residents paid more taxes than residents in 49 other States. Yet, District residents do not have a single vote in Congress. I submit to you that if the citizens of this city had a vote in this body we would not find ourselves in the position we are in today.

Mr. Chairman and members of the committee, the time has come for the Federal administration to halt its efforts to turn back the clock. We are managing our fiscal affairs in a responsible, carefully planned, and prudent manner. We have developed new practices and procedures to avoid the budgeting and management problems that we found when we came into office. We are whittling away at the awesome budget deficit accumulated while this city was controlled by Congress and which we inherited when we were granted limited self government in 1973.

What we ask for now is meaningful "Home Rule", and we ask you, Mr. Chairman and members of this committee, to help us achieve this now by correcting the *Chadha* problem without diminishing our authority to enact criminal laws and without increasing the Federal Government's role in the affairs of this city.

Senator MATHIAS. Our next witness is David A. Clarke, chairman of the council of the District of Columbia.

TESTIMONY OF DAVID A. CLARKE, CHAIRMAN, DISTRICT OF COLUMBIA CITY COUNCIL, ACCOMPANIED BY CHARLENE DREW JARVIS, COUNCILWOMAN OF THE DISTRICT OF COLUMBIA CITY COUNCIL, GREGORY E. MIZE, GENERAL COUNSEL, AND RICHARD CLARK, EXECUTIVE ASSISTANT

Mr. CLARKE. Thank you very much, Mr. Chairman.

Mr. Chairman, I am joined today by the general counsel of the council, Mr. Gregory Mize, and my executive assistant, Richard Clark who has undertaken the responsibility of the staff relationship between the congressional committees and the council. I would also like to indicate the presence at the hearing today in the audience of Councilmember Charlene Drew Jarvis, who is the chairperson of our Committee on Housing and Economic Development and who has been watching this matter steadily from the economic development perspective which, while we are focusing on criminal justice today, is of concern.

Senator MATHIAS. She has not only been watching it, but she has been actively participating and has been in frequent communication with this committee.

Mr. CLARKE. Thank you.

I am testifying today in support of S. 1858. My statement today is similar to that which I presented to you at the earlier hearing on S. 1858 which was held on September 28, 1983. As drafted the bill will assure that home rule government will be maintained in the District of Columbia in what I call the post-*Chadha* era. I believe that the home rule experience, especially as it relates to the exercise of criminal code authority, has been an excellent one.

I would also note that my testimony includes an attachment which is a copy of an agreement signed by Mayor Barry and myself regarding Council of the District of Columbia resolution authority.[1]

The agreement, which was the result of strong urging by Senator Eagleton during the last hearing, contains the proposed language change for section 1(b)(2) of the bill. It was signed on February 28, 1984 and was previously transmitted to you.

I would also like at this point to thank Congressman Fauntroy for his indication of the willingness to see this language through the House. We hope it will be incorporated in the Senate and House language of the bill.

In short, the legislation before you would amend the District of Columbia Self-Government and Governmental Reorganization Act, commonly called the Home Rule Act, to conform to the broad principles enunciated in *Chadha*.

The centerpiece of the *Chadha* case is a limited holding that a subsection of a Federal statute which allows a simple resolution of one House of Congress to invalidate a congressionally delegated act of the U.S. Attorney General affecting the rights of one alien is in violation of the Federal separation of powers doctrine and is thereby unconstitutional.

Valid arguments, to which I personally subscribe, have been made that the *Chadha* decision does not apply to the Home Rule Act under its provision for the relationship between the District and Congress and does not apply, as well, to the relationship between the mayor and the council.

This opinion recently gained additional credence in two separate rulings handed down by the superior court chief judge and an associate judge, both in March of this year. Both judges issued written opinions which distinguished the legislative provisions at issue in *Chadha* from the legislative veto provision which was provided in the Home Rule Act.

The two judges also made clear the distinction between the Congress' legislative authority with respect to Federal matters and its legislative authority over the District as derived from the U.S. Constitution.

I strongly believe that whatever route this committee ultimately decides upon that every possible effort should be made to maintain the present home rule authority and that, conversely, no legislation should be adopted which would turn back the clock of time.

I take this position for a number of reasons. One is the recent superior court decisions already discussed; two, the evolutionary history of home rule and congressional intent in passing the home rule charter; three, the agreement by affected segments of the community that we would not use *Chadha* as an occasion or vehicle for

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[1] A copy of the letter appears on p. 9 of Mayor Barry's testimony.

trying to reform our current processes; and four, the responsible exercise of criminal code authority by the local government.

With respect to the evolution of home rule and congressional intent, there has been steady progress in the past 2 decades toward greater self government, including the 23d amendment, the establishment of a mayor-council appointed government in 1967 to replace the old commissioner system, the establishment of a nonvoting delegate in 1970, and the enactment of a home rule charter in 1973, the Statement of Purposes section of which reads: "* * * and, to the greatest extent possible, consistent with the Constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters."

I reemphasize that the intent of Congress was to provide home rule, and I think we can assume that it also means to maintain home rule to the greatest extent possible.

Following a meeting convened by Delegate Fauntroy in which numerous individuals representing the public and private sector, it was agreed that a simple clarification of the *Chadha* decision would be pursued. It was informally agreed by District government officials representing the mayor, the council, bond counsel, Members of Congress, and others in attendance that they would not use *Chadha*-related legislation as a vehicle for adopting new reforms.

It was agreed that opportunity—if not opportunism—must take a back seat to the greater interest at stake—namely avoidance of the impending local legislative and financial crisis caused by the de facto, if not de jure, effect of the *Chadha* decision. The exercise of home rule authority in the past decade since the charter has in many ways been far superior to that of precharter days. I stand solidly behind the track record of the District government and especially with respect to the exercise of authority under District of Columbia Code titles 22, 23, and 24, the authority which is a primary focus of concern at this hearing.

I turn now to an analysis of our Criminal Code record.

One of the fundamental obligations of any local government is to protect the public safety. An essential ingredient in meeting this responsibility is the ability of the government to develop and enact laws which embody these policies. Congress recognized this basic principle when it lifted the prohibition against the council of the District of Columbia legislating in the area of local criminal law and specifically requested that we pick up where it left off.

In the 5 years that have passed since that prohibition was lifted, the city has made great strides in improving the quality of our local criminal laws. Upon receiving the authority to deal with this area, the council made criminal law reform one of its top priorities.

In 1979 when Congress asked the council to complete the task of reviewing the local criminal code, the council established and staffed a special unit of its Committee on the Judiciary in order to undertake this extensive project.

In 1980 the Committee on the Judiciary held an unprecedented number of public hearings on the issue of criminal law reform. The hearings were held in each ward of the city, over 97 witnesses were heard, and more than 1,000 pages of written testimony were received.

In 1981 additional hearings were held in which more than 50 witnesses testified. In retrospect it can honestly be said that no other area of law in the history of the elected council has received greater scrutiny or generated more public involvement.

Throughout this review process, all agencies and departments, both local and Federal, that comprise the District's criminal justice system were continuously consulted. As you are aware, we began our work by using as a model the report of the Law Revision Commission, as transmitted to us by the chairmen of the Senate Committee on Governmental Affairs Subcommittee on Governmental Efficiency and the House Committee on the District of Columbia Subcommittee on the Judiciary.

In their transmittal, the chairmen said:

> In the spirit of home rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code to the City Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia.

With respect to the Commission's report, we basically follow the approach that was recommended by the Office of the U.S. Attorney for the District of Columbia. The views and wishes of the Federal authorities were solicited and taken into account in all our actions regarding reform of the criminal code.

It should also be noted—and I emphasize—that the U.S. Department of Justice has never opposed any of the bills we have passed to amend D.C. Code titles 22, 23, and 24.

The effort spent in this endeavor has been more than justified by the end product. Five years after the transfer of authority, the city can point with pride to its accomplishments in this area. In that time, we have succeeded in:

One, completing a comprehensive revision of the city's drug laws, replacing what one U.S. attorney referred to as the least effective narcotics law in the United States with a modern enforcement scheme that has proven to be extremely effective in combatting and controlling the traffic of illegal drugs.

Two, revamping the local laws governing theft and white collar crimes, thereby closing one of the most egregious gaps in the District's criminal code.

Three, strengthening the local bail laws by adopting provisions designed to make the pretrial detention statute a more viable enforcement tool.

Four, creating and funding a program to provide compensation to innocent victims of violent crime.

Five, providing for the wearing of bulletproof vests by Metropolitan Police officers.

In addition to these accomplishments, the council has adopted numerous other laws which have served to enhance and promote law enforcement efforts on the local level.

These laws, among other things, have provided greater dispositional alternatives to the judiciary in sentencing, provided a drug paraphernalia law based upon the model endorsed by the Federal Drug Enforcement Administration, strengthened the District of Columbia secondhand and precious metal dealers laws, expanded the ambit of the prostitution and solicitation laws to include other than oral solicitations, strengthened the child pornography laws of

the District, and increased the fees payable under the Criminal Justice Act.

One other measure which was recommended by the Law Revision Commission and transmitted to us favorably from the Congress to reform the sexual assault laws was subsequently disapproved by the Congress after local press misrepresentations created citizen alarm during the period prior to congressional review.

It should be noted that prior to the council's work, the state of the District of Columbia law with respect to narcotics and white-collar crime was so bad that major prosecutions in these areas had to be conducted in the U.S. District Court pursuant to the U.S. Code.

I point to these achievements, because I believe they exemplify the need to keep the Council's authority over the criminal law intact. There is no question that Congress shares the local government's commitment to protect the safety of the District community.

The reality, however, is that Congress is a national body. Its members are elected by their constituencies to represent their interests on issues of national concern. As such, it cannot be expected that the same priority which would be given to the criminal laws of the District of Columbia, which are primarily a matter of local concern.

A true desire to see that the District's criminal laws are given adequate attention would seem to mandate that the authority to revise those laws remain with the body that has the most interest in ensuring that the laws are kept current.

While the District's criminal laws are not likely to be crucial to the constituency of every congressional district, they are of great concern to our local constituency. As elected officials, we have tried to be responsive to our constituents by placing top priority on this issue.

Not only is the interest in local criminal law reform of greater importance to the council, the structure of the council may actually be more conducive to effecting changes in the criminal laws. Criminal code reform often involves extremely controversial issues. The council's 13 members have been very successful in working closely together to resolve such issues. As a result, equitable compromises were reached and the laws were passed.

A larger legislative body might not have been so able to attain the same degree of success. The difficulties of steering such controversial legislation through a larger body is demonstrated by the history of the reform of the local bail laws.

The council was successful in unanimously adopting the provision which, among other things, extended the maximum period of time that a person could be detained pursuant to the local pretrial detention statute. This same provision was introduced during several consecutive sessions of Congress prior to council passage. However, no consensus was reached and the measure was never passed.

Over the past 5 years, the council has gained a tremendous amount of experience in dealing with the criminal code. An expertise has been developed in this area which should not now be disregarded. I believe our technical competence and professionalism in dealing with changes to the criminal code has been proven. Not

only have we demonstrated our ability to construct legally sufficient laws in this area, but we have been able to incorporate our knowledge of the District into the law so that it reflects the needs of the District.

In support of our position and as background for the subcommittee, I am also attaching hereto a copy of the letter of the congressional subcommittee chairmen upon the occasion of the transfer of criminal law authority from the Congress to the council and an article entitled "Cutting Crime: A Guide to Proposed D.C. Crime Reform," which describes in detail the legislative work to that time on the criminal code reform.

Senator MATHIAS. Without objection, that will be accepted for the record.[1]

Mr. CLARKE. In conclusion, we have exercised our authority reasonably and responsibly, and I can see no justifiable reason for it to even be suggested that the council should now be deprived of that authority. As strong advocates of home rule, I am asking for your continued support of the District's ability to practice self-government with respect to the criminal laws of the city. I hope that you will join us in efforts to oppose any requirement that Congress affirmatively adopt criminal code changes.

Accordingly, I urge you to report favorably S. 1858 with the recommended language change in section 1(b)(2). I thank you for your consideration of our request and for the opportunity to appear before you today.

Senator MATHIAS. Thank you very much for being here and for your very comprehensive statement.

I think you heard the Mayor, just a few minutes ago, speaking of the 60-day layover with expedited procedures for criminal enactment. I am wondering what your position would be with respect to that.

Mr. CLARKE. Mr. Chairman, I think that would be a reasonable compromise. I think also that the position that Mr. Barry spoke of with respect to "quick fix," simply ratifying prior acts and putting the severability clause into the Home Rule Act, would be an acceptable compromise.

I personally would be willing to proceed with all the changes except to leave intact the current criminal code one-House veto provision and have that litigated through the courts where I think we would be successful. That for me would be an appropriate compromise.

An appropriate compromise, however, would not be what the Department of Justice is proposing about the Attorney General being able to effectively change the procedures of Congress at his will by a statement of the Federal interest. That would not be an appropriate compromise, in my opinion.

Senator MATHIAS. Of course, going the litigation route exposes you to the prolonged uncertainties that the bond counsel have raised, does it not?

Mr. CLARKE. The indication that I made was that if we ratified all prior acts, if we provided a severability clause to the act, and if we cleared up the questions as to how legislation, other than crimi-

[1] Follows Mr. Clarke's prepared statement.

nal legislation, proceeds through the council, including bond issuance legislation, I think that would satisfy the bond counsel's concerns, I would then just leave the current provision of the Home Rule Act, dealing with criminal code review, section 602(c)(2), intact and let that be determined by the courts as to whether it is a violation of the *Chadha* doctrine or not. I don't think it would affect bond counsel's opinions on the question of the integrity of our bonds. Any of those would be appropriate compromises, in my mind.

Senator MATHIAS. We have introduced into the record the letter that you and Mayor Barry sent to the committee on February 28 with regard to the agreement that you reached between you on the mini-*Chadha* problem.

Do you have anything to add as far as that subject is concerned?

Mr. CLARKE. No, sir; I am perfectly willing to stand behind that agreement.

Senator MATHIAS. Well, we appreciate very much your being here today and your participation in this process. I hope that it is the beginning of a solution.

Mr. CLARKE. Thank you, sir.

Senator MATHIAS. Thank you very much.

[Mr. Clarke's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF DAVID A. CLARKE

Mr. Chairman, and other members of the Subcommittee, I am testifying today in support of S. 1858. My statement today is similar to that which I presented to you at the earlier hearing on S. 1858 which was held on September 28, 1983. As drafted S. 1858 will assure that home rule government will be maintained in the District of Columbia in what I call the post- *Chadha* era. I believe that the home rule government experience, especially as it relates to its exercise of criminal code authority has been an excellent one.

However, due to the fact that modification of the current home rule authority is being discussed as a result of the decision by the U.S. Supreme Court on June 23, 1983, in the case of *Immigration and Naturalization Service* v. *Chadha* [1] and due to the fact that the maintenance of home rule authority has been threatened by proposed home rule modifications which are inconsistent with the philosophy and approach of certain provisions contained in S. 1858 as introduced, I have expanded my previous testimony to include information about the home rule government experience.

I would also note that my testimony includes an attachment which is a copy of an agreement signed by Mayor Barry and me regarding Council of the District of Columbia resolution authority. The agreement, which was the result of strong urging by Senator Eagleton during the last hearing, contains a proposed language change for section 1(b)(2) of the bill. It was signed on January 27, 1984, and was previously forwarded to you. It stipulates the purpose and uses of resolutions including their use to approve or disapprove certain executive actions by the Mayor and other agencies pursuant to an act. As stated in the proposal language ". . . Such resolutions must be designed to implement that act."

Moreover, since the resolutions issue is a matter of local authority, since no federal interest is at stake, and since the Mayor and I have reached a signed agreement, it is my hope that the Subcommittee will incorporate the language change into the bill. Such action by the Subcommittee would constitute a maintenance of the status quo and would continue a practice which includes a precedent of more than thirty statutes with Council review provisions, a list of which is attached to the agreement.

In short, the legislation before you would amend the District of Columbia Self-Government and Governmental Reorganization Act (commonly called the Home Rule Act) to conform to the broad principles enunciated in *Chadha*.

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[1] *I.N.S.* v. *Chadha*, U.S., 77 L Ed. 2d 317 (1983).

The centerpiece of the *Chadha* case is a limited holding that a subsection of a federal statute which allows a simple resolution of one House of Congress to invalidate a Congressionally delegated act of the U.S. Attorney General affecting the rights of one alien is in violation of the federal separation of powers doctrine and is thereby unconstitutional. Valid arguments, to which I personally subscribe, have been made that the *Chadha* decision does not apply to the Home Rule Act under its provision for the relationship between the District and Congress and does not apply to the relationship between the Mayor and the Council.

This opinion recently gained additional credence in two separate rulings handed down by Superior Court Chief Judge Moultrie and Superior Court Judge Shuker, both in March of this year. Both judges issued written opinions which distinguished the legislative provisions at issue in *Chadha* from the legislative veto provision which was provided in the Home Rule Act. The two judges also made clear distinction between the Congress' legislative authority with respect to federal matters and its legislative authority over the District as derived from the United States Constitution. The bill before you would maintain the current home rule authority while modifying the Congressional veto process so as to eliminate any perceived inconsistency with the *Chadha* decision both in terms of Congressional review of Council legislation and in terms of Council approval or disapproval of city actions where that approval or disapproval is itself authorized by act.

I strongly believe that, whatever legislative route this Committee ultimately decides upon, every possible effort should be made to maintain the present home rule authority and that, conversely, no legislation should be adopted which would turn back the clock of time. I take this position for a number of reasons including:

(a) the evolutionary history of home rule and Congressional intent in passing the Home Rule Charter;

(b) the recent Superior Court decisions;

(c) the agreement by affected segments of the community that we would not use *Chadha* as the occasion nor vehicle for trying to reform our current processes, and

(d) the responsible exercise of criminal code authority by the local government.

With respect to the evolution of home rule and Congressional intent, there has been steady progress in the past two decades toward greater self-government including the 23rd Amendment, the establishment of a Mayor-Council appointed government in 1967 to replace the old commissioner system, the establishment of a non-voting delegate in 1970, and the enactment of a home rule charter in 1973 the "Statement of Purposes" section of which reads:

> ". . . and, to the greatest extent possible, consistent with the Constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters."

I re-emphasize that the intent of Congress was to provide home rule, and I think we can assume that it also means maintain home rule, to the greatest extent possible.

I have already commented on the content of the recent Superior Court rulings. Given the strong opinions represented in both instances that *Chadha* does not apply to the provisions of the Home Rule Act, it would seem most inappropriate to countermand the thrust of those court rulings with legislation that would undermine home rule. It does seem appropriate to uphold the fundamentals of those rulings with legislation such as S. 1858 which is aimed at maintaining current authority.

As you are aware, prior to the *Chadha* decision, there were a number of attempts underway to reform procedures under the Home Rule Charter. These reform proposals listed, among other concerns, proposals to reform the Congressional review process including a modification of the length of the review process as well a change in the veto procedures. Likewise, there was interest among bond counsel for the District to make changes which would improve the city's bond status. Both of these reform interests relate to the *Chadha* decision.

Following a meeting convened by Delegate Fauntroy in which numerous individuals representing the public and private sector participated, it was agreed that a simple clarification of the *Chadha* decision would be pursued. It was informally agreed by District government officials representing the Mayor and the Council, bond counsel, members of Congress, and others in attendance that they would not use *Chadha*-related legislation as a vehicle for advocating new reforms. It was agreed that opportunity (if not opportunism) must take a back seat to the greater interest at stake—namely avoidance of the impending local legislative and financial crisis caused by the de facto, if not de jure, effect of the *Chadha* decision. By taking a technical approach to *Chadha*, differing interests among the group would be temporarily tabled, the cloud hanging over scores of bills would be removed, and the

city's potential loss of status in the bond market due to the inability of counsel to give unqualified opinions on bond proposals, would be circumvented.

The exercise of home rule authority in the past decade, since the Charter, has in many ways been far superior to that of the pre-Charter days. I stand solidly behind the track record of the District government, and especially with respect to the exercise of authority under District of Columbia Code Titles 22, 23 and 24 the authority which is a primary focus of concern of this hearing. I turn now to an analysis of our criminal code record.

One of the fundamental obligations of any local government is to protect the public safety. An essential ingredient in meeting this responsibility is the ability of the government to develop and enact laws which embody those policies. Congress recognized this basic principle when it lifted the prohibition against the Council of the District of Columbia legislating in the area of local criminal law and specifically requested that we pick up where it left off.

In the five years that have passed since the prohibition was lifted, the city has made great strides in improving the quality of our local criminal laws. Upon receiving the authority to deal with this area of the law, the Council made criminal law reform one of its top priorites. In 1979, when the Congress asked the Council to complete the task of reviewing the local criminal code, the council established and staffed a special unit of its Committee on the Judiciary in order to undertake this extensive project. In 1980 the Committee on the Judiciary held an unprecedented number of public hearings on the issue of criminal law reform. The hearings were held in each ward of the city, over 97 witnesses were heard and more than 1,000 pages of written testimony were received. In 1981, additional hearings were held in which more than 50 witnesses testified. In retrospect, it can honestly be said that no other area of the law in the history of the elected Council has received greater scrutiny or generated more public involvement.

Throughout this review process, all agencies and departments, both local and federal, that comprise the District's criminal justice system were continuously consulted. As you are aware, we began our work by using as a model the report of the Law Revision Commission, as transmitted to us by the Chairmen of the Senate Committee on Govenmental Affairs Subcommittee on Governmental Efficiency and the House Committee on the District of Columbia Subcommittee on the Judiciary. In their transmittal, the Chairmen said, "In the spirit of home rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code of the City Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia." With respect to the Commission's report, we basically followed the approach that was recommended by the Office of the United States Attorney for the District of Columbia. The views and wishes of the federal authorities were solicited and taken into consideration in all our actions regarding reform of the criminal law.

It should also be noted that the United States Department of Justice has never opposed any of the bills we have passed to amend D.C. Code Titles 22, 23 and 24.

The effort spent in this endeavor has been more than justified by the end product. Five years after the transfer of authority, the city can point with pride to its accomplishments in this area. In that time, we have succeeded in:

(1) Completing a comprehensive revision of the city's drug laws, replacing what one Untied States Attorney referred to as the "least effective narcotics law in the United States" with a modern enforcement scheme that has proven to be extremely effective in combatting and controlling thre traffic of illegal drugs;

(2) Revamping the local laws governing theft and white collar crimes, thereby closing one of the most egregious gaps in the District's criminal code;

(3) Strengthening the local bail laws by adopting provisions designed to make the pretrial detention statute a more viable enforcement tool;

(4) Creating and funding a program to provide compensation to innocent victims of violent crime; and

(5) Providing for the wearing of bulletproof vests by Metropolitan Police Department Officers.

In addition to these accomplishments, the Council has adopted numerous other laws which have served to enhance and promote law enforcement efforts on the local level. These laws have, among other things, provided greater dispositional alternatives to the judiciary in sentencing, provided a drug paraphernalia law based upon the model act endorsed by the federal Drug Enforcement Administration, strengthened the D.C. secondhand and precious-metal-dealers laws, expanded the ambit of the prostitution and solicitation laws to include other-than-oral solicitations, strengthened the child pornography laws of the District, and increased the fees payable under the Criminal Justice Act. One other measure which was recom-

mended by the Law Revision Commission and transmitted to us from the Congress, to reform the sexual assault laws, was subsequently disapproved by the Congress after local press misrepresentations created citizen alarm during the period to Congressional review.

It should be noted that prior to the Council's work, the state of the District of Columbia law with respect to narcotics and white collar crime was so bad that major prosecutions in these areas had to be conducted in the United States District Court pursuant to United States Code.

I point to these achievements because I believe they exemplify the need to keep the Council's authority over the local criminal law intact. There is no question that Congress shares the local government's commitment to protect the safety of the District community. The reality, however, is that Congress is a national body. Its members are elected by their constituencies to represent their interests on issues of national concern. As such, it cannot be expected that the same priority would be given to the criminal laws of the District of Columbia, which are primarily a matter of local concern. A true desire to see that the District's criminal laws are given adequate attention would seem to mandate that the authority to revise those laws remain with the body that has the most interest in ensuring that the laws are kept current. While the District's criminal laws are not likely to be crucial to the constituency of every Congressional district, they are of great concern to our local constituency. As elected officials, we have tried to be responsive to our constituents by placing top priority on this issue.

Not only is the interest in local criminal law reform of greater importance to the Council, the structure of the Council may actually be more conducive to effecting changes in the criminal laws. Criminal code reform often involves extremely controversial issues. The Council's 13 members have been very successful in working closely together to resolve such issues. As a result, equitable compromises were reached, and the laws were passed. A larger legislative body might not have been able to attain the same degree of success. The difficulties of steering such controversial legislation through a larger body is demonstrated by the history of the reform of the local bail laws. The Council was successful in unanimously adopting a provision which among other things extended the maximum period of time that a person could be detained pursuant to the local pretrial detention statute. This same provision was introduced during several consecutive sessions of Congress. However, no consensus was reached, and the measure was never passed.

Over the past five years, the Council has gained a tremendous amount of experience in dealing with the criminal code. An expertise has been developed in this area which should not now be disregarded. I believe our technical competence and professionalism in dealing with changes to the criminal code has been proven. Not only have we demonstrated our ability to construct legally sufficient laws in this area, but we have been able to incorporate our knowledge of the District into the law so that it reflects the needs of the District. In support of our position and as background for the Subcommittee, I am also attaching hereto a copy of the letter of the Congressional subcommittee chairmen upon the occasion of the transfer of criminal law authority from the Congress to the Council, and an article entitled "Cutting Crime: A Guide to Proposed D.C. Crime Reform", describing in detail the legislative work to that time on the criminal code reform.

In conclusion, we have exercised our authority responsibly and I can see no justifiable reason for it to even be suggested that the Council should now be deprived of that authority. As strong advocates of home rule, I am asking for your continued support of the District's ability to practice self-government with respect to the criminal laws of the city. I hope that you will join us in efforts to oppose any requirement that Congress affirmatively adopt criminal code changes.

Accordingly, I urge you to report favorably S. 1858 with the recommended language change in section 1(b)2. I thank you for your consideration of our request and for the opportunity to appear before you today.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, DC, December 5, 1978.

Mr. DAVID A. CLARKE, Esq.,
Chairman, Counsel on Judiciary, District of Columbia City Council, Washington, DC.

DEAR MR. CLARKE: The accompanying report contains the joint recommendations of the House District Subcommittee on Judiciary and the Senate Subcommittee on Government Efficiency and the District of Columbia regarding the Law Revision Commission's proposed Basic Criminal Code.

This joint report highlights the major deficiencies and problem areas in the Commission's code proposals, and suggests methods or alternatives for correcting them. In some instances, the report comments on certain minor or nonsubstantive technical problems which need to be addressed in order to make the LRC proposals a more workable and less ambiguous code.

Each subcommittee has independently completed an extensive and thorough review and analysis of the hearings, statements, and proposals compiled as a result of subcommittee considerations of the Commission's proposed Basic Criminal Code. The joint report sets forth recommendations, changes and amendments to the LRC proposals which both Subcommittees have identified as being in need of revision. There are numerous other issues on which the subcommittees will comment separately at a later date.

The revision of the District of Columbia Criminal Code has been a tedious and careful process and has resulted in a voluminous and detailed work product by the Law Revision Commission and the House and Senate subcommittees. Their combined efforts have culminated in a comprehensive and modern set of criminal laws for the District of Columbia.

The present criminal law of the District of Columbia is an outdated relic of mosaic statutes, cases, and administrative interpretations passed into law, in a piecemeal fashion, over a period of time that stretches from 1901 to the present. Time has changed the social mores and standards by which we live today. The criminal laws of the District have not kept pace with that change. With the proposals made by the Law Revision Commission and the extensive hearings record and recommendations from the subcommittees, the City Council will stand in the unique position of being able to begin the modernization process without further delay.

In the spirit of home rule, we are delighted to begin the process of transferring jurisdiction of the proposed criminal code to the City Council so that they can complete the task of codification by adding the essential ingredient of their knowledge of the District of Columbia. We look forward to continued oversight, communication and exchange between Congress and the Council relative to the code, and to rapid progress towards completion of the task that we have begun.

Respectfully submitted,

THOMAS F. EAGLETON,
Chairman, Senate Subcommittee on Governmental Efficiency.

ROMANO L. MAZZOLI,
Chairman, House Subcommittee on Judiciary.

(From the District Lawyer, September/October 1981)

CUTTING CRIME: A GUIDE TO PROPOSED D.C. CRIME REFORM

(By David A. Clarke and Anne Meister)

Crime is an issue that touches all of us. In the District of Columbia, as in many urban jurisdictions, the problem of crime is a reality of everyday life and fear of crime has reached alarming proportions. In response to this rising concern about crime, the D.C. City Council has given serious consideration to many suggested reforms to our local criminal laws. Proposals have been introduced to make changes in the District's laws that deal with drugs, sexual assault, prostitution, theft, white-collar crime, and sentencing, among others. Yet none of the suggested reforms, either alone or in combination, offers a complete solution to the problem. There is no single solution because there is no one cause of crime; lawbreaking is not unrelated to problems in housing, education, recreational resources or unemployment.

A contribution can be made by legislative reforms, provided the reforms are reasoned and address the aspects of the crime problem that can be remedied, in part, by changes in the language of the law. Reforms also must be designed to meet evolving community concerns and community values. To quote Roscoe Pound: "The law must be stable, but it must not stand still."

This article discusses the history of local criminal law reform, the legislative process for such reforms, and the measures introduced before the Council of the District of Columbia to make reforms in the District's criminal laws.

History of Local Criminal Law Reform

Like many aspects of this city's history, the history of local criminal law reform in the District of Columbia is unusual. Even with the establishment of a limited home rule government in 1975, Congress reserved exclusive jurisdiction over revisions to the criminal law titles of the District of Columbia Code. It was not until 1979 that primary legislative jurisdiction over the local criminal laws was transferred to the Council of the District of Columbia, as the locally elected legislative body.

When Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act to provide for an elected local government, the newly created government was prohibited from enacting legislation in a number of important areas (D.C. Code, sec. 1-147(a)(9)(Supp. V 1978)). Included in the restrictions was a two-year ban upon Council enactment of any legislation with respect to title 22 of the District of Columbia Code, relating to crimes; title 23, relating to criminal procedure; and title 24, relating to prisoners and their treatment. During the period between the 1973 passage of the Home Rule Act and the scheduled expiration of this limitation on the new government's power, Congress enacted the District of Columbia Law Revision Commission Act (D.C. Code, sec. 49-401 to 403 (Supp. V 1978)). This act created a prestigious advisory commission, with members appointed by a variety of federal and local sources, to examine and make recommendations for reform of the local laws. Specifically, the commission was required to:

> . . . give special consideration to the examination of the common law and statutes relating to the criminal law in the District of Columbia, and all relevant judicial decisions, for the purpose of discovering defects and anachronisms in the law relating to the criminal law in the District of Columbia and recommending needed reforms.'

This task was tremendous because the commission faced a body of criminal law that had not been comprehensively reviewed or revised since 1901. In 1975, the commission received partial funding, and in 1976 the two-year ban on Council action in this area was extended for an additional two years.

The commission focused its attention on criminal law reform and developed final recommendations for a revised "basic" criminal code for the District of Columbia by March 1978. These recommendations were characterized as a "basic" criminal code since the recommendations proposed made revisions in laws treating traditional crimes against persons and property, such as murder, rape, robbery, theft and arson, but did not address so-called crimes against society, such as prostitution, gambling and drug offenses. In the areas considered, the commission recommended sweeping changes in the substantive law and provided a presumptive sentencing model for these sentences it proposed to recodify, leaving the existing indeterminate sentencing model for the remaining offenses.

Congress held a series of hearings on these recommendations, but ultimately determined to allow the council to complete the task. As a result of this transfer, the Criminal Code Project was created as a special unit of the D.C. Committee on the Judiciary, designed to assist in the committee's review of criminal law legislation. Following this transfer of authority, the commission's recommendations were introduced as the starting point for local debate on these issues. The Committee on the Judiciary scheduled an unprecedented series of eight public hearings on the proposal.

At the hearings little testimony was presented that expressed overall support of the commission's recommendations, apart from that presented by the commission itself. Opponents of the

commission's proposal included the U.S. Attorney for the District of Columbia, the executive branch of the D.C. government, the Board of Judges and the Advisory Committee on Criminal Rules of the D.C. Superior Court.

Opposition to the proposal centered around four major concerns: (1) the practical obstacles of operating a dual system in which some, but not all, criminal offenses were recodified; (2) the difficulty of understanding and applying the new terminology used in the proposal, especially the new, uniform state of mind definitions used; (3) the relative benefit of the proposed revision when weighed against the costs of its implementation; and (4) the potential cost of the proposal, estimated at $132.6 million in added capital and operating costs during the first five years.

In June 1980, the Committee on the Judiciary issued an interim report on criminal law reform in which the committee determined not to enact the Law Revision Commission's proposal. Rather, the committee decided to direct its resources toward the development of legislation in areas specifically identified during the course of the hearings as posing special problems to or of particular interest to the community. Some of these areas were included in the commission's proposal and some were not.

Consequently, the committee set as priority reform of local laws, such as drug laws and white-collar laws, which do not provide an adequate basis for local law enforcement in the event of a transfer to District officials of prosecution authority. The committee also set as priority the consideration of matters that were identified during the course of the hearings as areas of pressing community concern, such as reform of the sexual assault laws, drug laws, penalties for weapons offenses, bail laws and problems raised by juvenile crime. Over the next several months, the work of the Criminal Code Project concentrated on drafting proposed legislation in many of these areas.

This year, eleven bills have been introduced to reform criminal law in the District of Columbia. These bills became the subject of another series of public hearings on criminal law reform held by the Committee on the Judiciary on March 12 and 13, 1981. Just prior to these hearings, a twelfth criminal law reform bill was introduced and an additional hearing on this bill was held on June 2, 1981. As described in the following section, these bills are at various stages of the local legislative process.

Legislative Process For Local Criminal Law Reform

The legislative process for local criminal law reform is somewhat unusual. Congressional review of acts to amend the criminal law titles of the District of Columbia Code, titles 22, 23 and 24, differs from the review accorded to other legislative measures. In all other respects, the legislative process is the same.

Once a bill has been introduced and referred to one of the nine standing committees of the Council, (criminal law legislation is referred to the Committee on the Judiciary), a public hearing may be scheduled. Notices of all public hearings are published in the D.C. Register at least fifteen days in advance of the date of the hearing.

The chairperson of the committee is generally responsible for setting the agenda of that committee. If the committee takes no action on a bill, the bill dies at the expiration of the Council period. If a bill is placed on the agenda of the committee, following staff research and review of the comments received, the committee members meet to mark up the bill. At mark-up, amendments may be made by the committee members and a formal vote is taken to approve or disapprove the measure. If approved, the final version of the committee action on the bill is called the committee print and this committee print, along with a report detailing the purpose and impact of the bill, is sent to the full Council for review.

The Council passes a bill (as opposed to an emergency act, a budget request act or a resolution) by voting twice to approve the measure in substantially the same form. Once passed, the bill is sent to the Mayor, who may approve or veto the measure. If vetoed by the Mayor, the measure still may be enacted by a two-thirds majority vote of the Council. Once a bill has been approved by the Mayor or the Mayor's veto has been overridden, the bill becomes an act and is sent to Congress for review.

Generally, Congress may disapprove an act only by passing a joint disapproval resolution. However, acts that seek to amend the criminal law titles of the District of Columbia Code are subject to disapproval by either house of Congress. If an act is not disapproved within thirty legislative days (not calendar days), it becomes law.

An alternative procedure for the enactment of legislation is the initiative process, by which proposed legislation is submitted to District voters in summary form as an initiative measure. If approved by a majority of the registered, qualified electors voting on the measure, the initiative is sent to Congress for review.

The twelve criminal law reform proposals that will be discussed in this article are at various stages of the local legislative process. One of these proposals, the D.C. Uniform Controlled Substances Act of 1981, recently became law. Another, the D.C. Sexual Assault Reform Act of 1981, is undergoing congressional review and may have become law by the date of this publication. A third proposal, the D.C. Bail Amendment Act of 1981, was disapproved by the Committee on the Judiciary, but the Control of Prostitution and Sale of Drugs in Public Places Criminal Control Act of 1981 was approved and is awaiting review by the full Council. The remaining proposals are pending action by the Committee on the Judiciary.

Drug Reform

The *District of Columbia Uniform Controlled Substances Act of 1981* became law on August 5, 1981. Patterned after the model developed by the National Conference of Commissioners on Uniform States Laws and, to a certain extent, the current federal law, this legislation makes sweeping reforms in the local drug laws. Prior District law in this area consisted primarily of the 1938 Uniform Narcotics Drug Act, D.C. Code, sec. 33-401 to 425, and the 1956 Dangerous Drug Act for the District of Columbia, D.C. Code, sec. 33-701 to 712. These prior laws lacked clarity in defining those substances placed under control and penalized all first-time drug offenses as misdemeanors, regardless of the substance involved, the type of conduct engaged in and the parties to the illegal transaction. In addition, these prior laws did not address adequately the diversion of drugs into illicit chan-

nels and used a cumbersome and time-consuming method for updating the list of substances subject to control. As a result of these inadequacies, major drug cases in the District of Columbia generally were prosecuted by the U. S. Attorney in the federal court system, rather than in the D.C. Superior Court. Consequently, the local preventive detention laws were not applicable to these cases.

In contrast, the District of Columbia Uniform Controlled Substances Act of 1981 creates a comprehensive system governing the use of controlled substances in the District. It clearly identifies those substances subject to control and significantly expands the coverage of the law by controlling all substances, excluding alcohol and tobacco, with a known potential for abuse. Depending upon factors such as the degree of abuse potential, the known effect, harmfulness and level of accepted medical use, each controlled substance is placed into one of five schedules. The highest schedule, Schedule I, contains substances that have a high potential for abuse and no accepted or safe medical use in treatment. The remaining schedules, II through V, control substances that have an accepted medical use but, in varying degrees, a lesser potential for abuse and for physical or psychic effects on users. The new drug law also creates an administrative system for scheduling new substances and rescheduling those substances already subject to control. The use of an administrative system, rather than the regular legislative process, is designed to enable the District government to react promptly to the introduction of new drugs and to changes in the known abuse potential of existing substances.

Penalties under the new drug law, which are generally much higher than those provided under the prior local laws, vary according to the gravity of the offense committed and the schedule of the substance involved. While simple possession for one's own use continues to be sanctioned as a misdemeanor offense, penalties for the manufacture, distribution, or possession with intent to manufacture or distribute range from up to one year imprisonment and a $10,000 fine for schedule V substances, to up to fifteen years imprisonment and a $100,000 fine for schedule I or II narcotics. Special penalties are provided for repeat offenders that double the maximum fine and term of imprisonment that may be imposed. Special penalties also are provided for persons who are twenty-one years of age or older who distribute controlled substances to a minor or enlist the assistance of a minor to sell or distribute controlled substances for the benefit of the adult. Paralleling the provisions of the current federal law, the new local drug law also penalizes persons who attempt or conspire to commit a controlled substances offense and permits conditional discharge of first offenders found guilty of simple possession for personal use.

The District of Columbia Uniform Controlled Substances Act of 1981 also creates a new, closed regulatory system for the legitimate handling of controlled substances, in order to control better the diversion of these substances to illicit sources. This regulatory system requires registration of all persons who wish to dispense, distribute, manufacture or conduct research with controlled substances in the District of Columbia; sets requirements related to the recordkeeping, inventories, order forms and prescriptions of registrants; restricts the distribution and dispensing of controlled substances by registrants; and imposes separate penalties for offenses committed in violation of these regulatory controls. These provisions will serve to identify those persons in the District of Columbia who have legitimate access to controlled substances and to document the movement of controlled substances in the District. Other administrative reforms include a substantial expansion of the forfeiture powers of the District of Columbia, delineation of more specific standards for the issuance and implementation of administrative search warrants, and a provision for the admissibility of chemist reports without a personal appearance by the chemist if the results of the analysis are not in dispute. Finally, the new drug law authorizes the Mayor to develop a series of educational programs for adult and juvenile violators about the dangers of drug use and abuse.

Sexual Assault Reform

The *District of Columbia Sexual Assault Reform Act of 1981* was enacted by the Council on July 14, 1981, signed by the Mayor on July 21, 1981, and currently is undergoing congressional review. Patterned after the proposal developed by the D.C. Law Revision Commission on sexual assault offenses, this legislation seeks to cr

solidate and modernize local law in this area. Key provisions of this act would:

(1) eliminate all gender-based references in sexual assault crimes;

(2) increase the protections afforded to children who are wards by expanding the existing prohibition against sexual activity by blood relations to apply also to adoptive parents, stepparents, certain relatives related by marriage, and other persons who live in the same household and who misuse their supervisory or disciplinary control to cause the sexual act;

(3) impose special prohibitions against sexual activity with inmates or patients;

(4) eliminate the current spousal exemption for the most serious types of sexual assault; and

(5) eliminate criminal prohibitions against private, noncommercial, consensual sexual activity between adults, except for conduct that violates the current incest law.

Due to misleading coverage by the local press that characterized the measure as a bill to legalize teenage sex, the debate over this act focused on changes to the current statutory rape law. The current statutory rape law in the District of Columbia prohibits a male of any age from engaging in sexual activity with a female under the age of sixteen. While this law protects females, it does not protect young males, although the Children's Hospital Child Protection Unit reports that more than 25 percent of the sexually abused children it handles are male.

As originally proposed, the District of Columbia Sexual Assault Reform Act of 1981 would have replaced this gender-based classification with a classification based upon age differences between the two parties, patterning the law after a model used, in part, in thirty-four jurisdictions and recommended by the D.C. Law Revision Commission. The prohibitions against sexual activity with an older or younger child contained in the bill would apply even if the sexual activity were consensual, unless the parties were married to one another. Sexual acts compelled by the use of force or threats would be punishable as sexual assault in the first degree, regardless of the age of the victim.

Concern over the mistaken public perception of the bill's provisions led the Council to delete this provision from the bill and substitute a gender-neutral version of the current statutory rape law. As a result, this act, as amended, would impose a penalty of up to twenty years' imprisonment upon any person who engages in sexual activity with a child under the age of sixteen.

Control of Prostitution and Sale of Drugs

The *Control of Prostitution and Sale of Dangerous Drugs in Public Places Criminal Control Act of 1981* was approved by the Committee on the Judiciary at its July 22, 1981 meeting. As amended in committee, this bill would revise the solicitation for the purposes of prostitution statute, D.C. Code, Sec. 22-2701, by raising th fine from $250 to $300, and by clarifi ing that the prohibition against solici ing acts of prostitution includes the specific, enumerated acts contained in the bill when engaged in for the purpose of prostitution. This bill also would revise the peddling of drugs on streets statute, D.C. Code, sec. 2-617, to clarify that these same specific enumerated acts, when engaged in for the purpose of selling controlled substances, are included in the prohibition against offering for sale by peddling. The specific acts are described in the bill as follows: "remaining or wandering about a public place and repeatedly beckoning to, or repeatedly stopping, or repeatedly attempting to stop, or repeatedly attempting to engage passers-by in conversation, or repeatedly stopping or attempting to stop motor vehicles, or repeatedly interfering with the free passage of other persons."

Theft and White-Collar Crimes

The *Theft and White-Collar Crime Act of 1981* is another major piece of proposed legislation. This bill contains numerous reforms to the laws of theft, fraud, bribery, perjury, blackmail, extortion, obstruction of justice and forgery. Earmarked during the criminal law reform hearings as an area of District law that has hampered effective law enforcement efforts on the local level,[3] this bill is designed to remedy specific deficiencies in the law rather than to serve as a comprehensive revision. The bill would eliminate artificial distinctions between the various forms of theft by consolidating larceny offenses, false pretenses, embezzlement and receiving stolen property into a single theft offense. It also would permit the values of items stolen as part of a common scheme or plan to be aggregated for the purpose of being prosecuted as a felony rather than as multiple misdemeanors and would provide an enhanced penalty for those who steal from a senior citizen.

In order to provide more e e tools for combating consumer d the law of false pretenses would be changed to cover attempted false pretenses and promises of future perform

ance made without intent to perform. Perjury also would be redefined so as o include false statements made under penalty of perjury but not under oath. The current obstruction of justice statute would be expanded to prohibit obstructions other than those accomplished by means of an overt threat or the use of force.

Another major feature of the bill would be the development of a number of new statutory offenses, including:

(1) a statute prohibiting the taking or offering of an unlawful gratuity;

(2) a statute prohibiting payoffs for past official behavior;

(3) a statute prohibiting trafficking in stolen property;

(4) fraud statutes that create two degrees of fraud and prohibit schemes to defraud;

(5) a shoplifting statute;

(6) a commercial piracy statute that prohibits thefts of recordings and other commercial property;

(7) a forgery of objects statute; and

(8) a credit card fraud statute.

The bill also would repeal the current criminal statutes regarding criminal libel, mislabeling potatoes and kosher meats, and procuring the enlistment of criminals.

Criminal Statute of Limitations

The *District of Columbia Criminal Statute of Limitations Act of 1981* is expected to be marked up by the Committee on the Judiciary this fall. The bill would, for the first time, create a local statute of limitations for criminal offenses. At present, the District of Columbia relies upon the applicable federal law. This federal law sets no time limitation on prosecutions for capital crimes and a five-year limitation on prosecutions for other criminal offenses.[3]

In general, the limitations that would be imposed by the bill differ from the current federal law by providing for no time limitation on prosecutions for first degree murder, by setting a ten-year time limitation on prosecutions for second degree murder, by extending the time limitation for felony prosecutions to six years, by restricting the time limitation for misdemeanor prosecutions to three years, and by creating special, extended time limitations for prosecutions based on fraud, breach of a fiduciary trust and misuse of public office. Many of these provisions stem from the recommendations of the D.C. Law Revision Commission.

The need to develop a local criminal statute of limitation was supported during the criminal law reform hearings in particular due to the elimination of all capital crimes[4] in the District of Columbia. One major amendment suggested by the U.S. Attorney for the District of Columbia that is currently being considered would impose no time limitation on all prosecutions for murder, including murder in the second degree.

Sentencing Improvements

The *District of Columbia Sentencing Improvements Act of 1981*, also expected to be marked up by the Committee on the Judiciary this fall, would make certain, discrete changes in local sentencing procedures. The most important change suggested by this bill would restore split sentencing as a sentencing option. Split sentencing is a sentence in which a judge orders the defendant to serve a set period of imprisonment followed by a set period of probation. Split sentencing by local judges was prohibited in 1979 by a court decision based on an interpretation of the current statutory law.[5] As a consequence, judges now are forced to choose between incarceration and probation in sentencing. The language of the bill also would promote sentencing flexibility by permitting a judge to suspend the imposition, as well as the execution, of a sentence.

The pending sentencing bill would limit all sentences of probation to five years or less, and would provide that a defendant may not be placed on probation without his or her consent. This five-year limit on probation sentences would codify local sentencing practice.

Another provision of the bill would require the court to notify aliens of the potential, collateral consequences of a guilty plea by giving the following advisement on the record:

> If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion for admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Any alien who was not notified properly, and who could show that his or her conviction might have these collateral consequences, would be entitled under the bill to withdraw the guilty plea and enter a plea of not guilty.

In an attempt to promote the use of restitution, reparations and community service, the bill also contains a general provision that statutorily would authorize the court to order these remedies in addition to any other condition of the sentence imposed or as a condition of probation. This provision was developed in response to community comments during the criminal law reform hearings, and would serve as a legislative endorsement for the increased use of these sentencing options in appropriate criminal cases.

Last, the bill as introduced would establish standard rules for the making and disclosure of presentence reports. However, since the language of the bill merely codifies the current court rules, these provisions probably will be deleted at the time of committee mark-up.

Mandatory Sentencing

Three mandatory sentencing bills now are pending before the Committee on the Judiciary. The first, the *Added Punishment for Crimes Committed With A Dangerous Weapon Act of 1981*, would impose a five-year mandatory minimum sentence upon those convicted, for the first time, of committing a "crime of violence" while "armed," and would increase to ten years the current five-year mandatory sentence for repeat offenders. This bill would not change the current statutory definition of a "crime of violence," which includes not only offenses such as murder, rape, kidnapping and robbery, but also such crimes as larceny and housebreaking. The bill also would not amend the current reference to "armed" offenses as offenses committed "while armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon. . . ."[6] Consequently, the offenses that would be covered by these mandatory minimum sentences range from murder by use of a sawed-off shotgun to shoplifting a knife. Under this bill, offenders would be denied probation, sentencing under the Federal Youth Corrections Act or the possibility of parole prior to the

expiration of their minimum sentence.

A similar piece of proposed legislation also would impose a five-year mandatory minimum sentence on first offenders convicted of committing a "crime of violence" while "armed," and a ten-year mandatory minimum sentence on repeat offenders. However, the bill, the *1981 Amendment to Section 22-3202 of the District of Columbia Code*, would limit the application of these mandatory minimum sentences to a "crime of violence" in which a firearm, pistol or imitation firearm or pistol was used or was readily available. The bill also differs in that it would not bar application of the Federal Youth Corrections Act to first offenders.

The third mandatory minimum sentencing bill pending before the Committee on the Judiciary, entitled the *Mandatory and Increased Penalty for Offenses Committed During Release Act of 1981*, would impose a five-year mandatory minimum sentence on persons convicted of committing a felony offense while on pretrial release. The bill also would impose a one-year mandatory minimum sentence on persons convicted of committing a misdemeanor offense while on pretrial release. Under the bill, a prison term must be imposed since judges would be precluded from granting probation or suspending sentence for these mandatory minimum sentences. These mandatory sentences would have to be served consecutive to any other sentence imposed and would apply even if the original charge, for which the offender was placed on pretrial release, was dismissed.

During the criminal law reform hearings held this year, concerns were raised by the U.S. Attorney for the District of Columbia, the D.C. Department of Corrections and the D.C. Board of Parole, and many community groups that regard the value of mandatory sentences in general. Written comments by Division V of the D.C. Bar, which opposed enactment, pointed out the practical difficulties that mandatory minimum sentences can create:

> . . . Judges would be deprived of discretion to tailor sentences to fit the crime and the background of the defendant. Prosecutors would gain some leverage in plea bargaining, but would be faced with the dilemma of either forcing a defendant to go to trial by refusing to make a plea offer to an unarmed count or making a disporportionately lenient offer. Innocent defendants would be pressured to plead to lesser unarmed counts. Courts would be crowded with trials in which there was overwhelming evidence of guilt but the defendant could not afford to accept a plea to an armed count. Prisons would be crowded with those serving fixed sentences. Parole authorities would be deprived of discretion to evaluate the suitability of a prisoner for parole during the mandatory minimum term.'

Supporters of mandatory minimum sentencing, such as the Metropolitan Police Department, advocated the use of sterner sanctions and the need for consistency of sentences for like offenses and like offenders. Other supporters pointed out the possible deterrent effect of these sentences.

A preliminary test of Council sentiment toward mandatory minimum sentences arose during the floor debate on the District of Columbia Uniform Controlled Substances Act of 1981. At that time, one councilmember presented a

number of amendments, some of which would have imposed mandatory minimum sentences for the manufacture, distribution, or possession with intent to manufacture or distribute, certain controlled substances. After the Council's general counsel opined that the amendments were sufficiently broad as to provide a mandatory minimum sentence for simple transfer by one person to another of a controlled substance, such as a sleeping pill, the Council defeated the proposed amendment by a vote of ten to three.

Recently, a councilmember has filed with the Board of Elections and Ethics a proposed voter initiative. This initiative essentially would enact his proposals for imposing mandatory minimum sentences on persons who commit a "crime of violence" while armed with a pistol or firearm or who manufacture, distribute, or possess with intent to manufacture or distribute, certain controlled substances. The Board of Elections and Ethics has approved this proposed initiative for circulation. If the initiative survives any challenges, and if 5 percent of the registered voters sign petitions demanding that the matter be placed on the ballot, then this initiative measure will be voted on in the forthcoming election.

Other Crime Related Legislation

The *Drug Paraphernalia Act of 1981* would prohibit the use of, or possession with intent to use, drug paraphernalia. It also would prohibit the sale or manufacture of such paraphernalia under circumstances in which the seller knows or has reason to know that the paraphernalia will be used in violation of the provisions of the bill and impose a special penalty upon adults who deliver drug paraphernalia to certain minors.

Unlike the drug paraphernalia provision contained in the new drug law, this bill would define the term "drug paraphernalia" broadly. During the course of the criminal law reform hearings, serious concerns were raised regarding the constitutionality of this proposed bill, which follows the model drafted by the federal Drug Enforcement Administration. This model has been under attack in both state and federal courts throughout the country and judicial decisions have split over the constitutional issues raised. Until such time as these issues are finally determined by the courts, the committee is expected to delay consideration of this bill.

The *1981 Amendment to Section 6-1876 of the District of Columbia Health and Safety Code* would make changes in the penalties imposed for violations of the local gun control law. However, this bill is drafted to amend the lesser penalties contained in the gun control law when it was origir enacted in 1976, rather than as amended by the Council.

By a vote of three to one, the Committee on the Judiciary voted to disapprove the *District of Colun... Bail*

Bill No.	Act No.	Law No.	Short Title	Sponsors
4-83	–	–	Legal Representation Act of 1981	Mason
4-109	–	–	Added Punishment for Crimes Committed With A Dangerous Weapon Act of 1981	Kane
4-110	–	–	1981 Amendment to Section 6-1876 of the District of Columbia Health and Safety Code	Ray Shackleton
4-111	–	–	1981 Amendment to Section 22-3302 of the District of Columbia Criminal Code	Ray
4-120	–	–	District of Columbia Sentencing Improvement Act of 1981	Clarke Rolark Shackleton
4-121	–	–	District of Columbia Statute of Limitations Act of 1981	Clarke Rolark Shackleton
4-122	4-30	–	District of Columbia Sexual Assault Reform Act of 1981	Clarke Rolark Shackleton
4-123	4-31	4-29	District of Columbia Uniform Controlled Substances Act of 1981	Clarke Rolark Shackleton Wilson
4-125	–	–	Mandatory and Increased Penalty for Offenses Committed During Release Act of 1981	Winter
4-127	–	–	District of Columbia Bail Amendment Act of 1981	Clarke
4-133	–	–	District of Columbia Theft and White-Collar Crimes Act of 1981	Clarke
4-184	–	–	Control of Prostitution and Sale of Dangerous Drugs in Public Places Criminal Control Act of 1981	Wilson

Copies of this legislation may be obtained, free of charge, from the Legislative Services Unit of the Council of the District of Columbia by phoning 724-8050, or by writing to Room 28, District Building, Washington, D.C. 20004.

Amendment Act of 1981 at its July 22, 1981 meeting. This attempt to amend the District's release and pretrial detention laws failed, in part, because of concerns about the effectiveness and potential fiscal impact of the proposed changes. As presented to the committee, the bill would have:

(1) increased the maximum time of detention, under the preventive detention laws from sixty to ninety days for good cause shown;

(2) increased the holding period for detaining persons arrested while on federal or out-of-state probation or parole from five to ten days; and

(3) authorized the pretrial detention, without bond, of a person charged with first degree murder who poses a risk of flight or danger to the community.

A Look Ahead

As past experience has demonstrated amply, on both a national and state-by-state basis, reform of criminal law is a lengthy process. The proposals passed by and pending before the Committee on the Judiciary consist of partial reforms dealing with distinct and separate areas of criminal law and addressing the more pressing local crime problems. In the upcoming months, the committee will undertake a final review of the pending proposals, based upon comments received during and after the criminal law reform hearings. In addition, the committee plans to review proposed legislation on related criminal law issues, such as a proposal to provide immunity to insurers who report suspected cases of arson to the local authorities and a proposal to provide compensation to victims of crime. A more long-range goal of the Committee on the Judiciary and its staff is preparing new legislative proposals to continue its work toward comprehensive review of the local criminal law.

Criminal law reform is not a static process; it responds to new developments in local crime problems and it depends upon the input of concerned citizens. The D.C. Bar already has contributed to this process through its representation on the D.C. Law Revision Commission, through the written comments submitted by Division V and through the insights shared by its individual members.

Now an even greater challenge exists for the Bar and its members as the city faces the first ballot initiative in the criminal law area. During the future debate, the Bar is the one element of our community most able to help the community-at-large understand the content and the potential impact of the proposed initiative.

[1] D.C. Code § 49-402(a) (Supp. V 1978).

[2] Statement of Executive Branch Agencies on the Bills to Expand and Amend the D.C. Criminal Code Presented to the Committee on the Judiciary, Council of the District of Columbia (March 12, 1981).

[3] 18 U.S.C. § 3282 (1976). This general statute of limitation applies except as otherwise expresly provided by law.

[4] *See* Whalen v. United States, 445 U.S. 684, 686 n. 2 (1980); Furman v. Georgia, 408 U.S. 238 (1972); United States v. Lee, 489 F.2d 1242, 1247 (D.C. Cir. 1973).

[5] Davis v. United States, 397 A.2d 951 (D.C. 1979).

[6] D.C. Code § 22-3202 (1973). Other dangerous or deadly include but are not limited to "a sawed-off shotgun, shotgun, machine-gun, rifle; dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack billy, or metallic or other false knuckles."

[7] Report of the Criminal Justice Administration Committee of the Division of the District of Columbia Bar on the 1981 "Anti-Crime" Legislation (April 29, 1981) 1.

Senator MATHIAS. Our next witness is Mr. Alan Schott, Assistant General Counsel for Domestic Finance of the Department of the Treasury.

Mr. Schott?

TESTIMONY OF ALAN SCHOTT, ASSISTANT GENERAL COUNSEL FOR DOMESTIC FINANCE, DEPARTMENT OF THE TREASURY

Senator MATHIAS. Mr. Schott, I understand that you do not have a statement; is that correct?

Mr. SCHOTT. That is correct, Mr. Chairman.

I would be pleased to answer any questions that you may have regarding the District's financial situation as it relates to the Department of the Treasury.

Senator MATHIAS. Let me begin by asking for your view of the financial situation of the city at this time.

Mr. SCHOTT. Do you have anything specific, Mr. Chairman, or——

Senator MATHIAS. Well, I want to give you the broadest latitude.

Mr. SCHOTT. I think that the District's bond counsel opinion speaks for itself and that is that the District will have, be unable to go to the market unless the *Chadha* issue is resolved, and that will require action by this committee and by the Congress for that resolution, unless——

Senator MATHIAS. And the President's signature.

Mr. SCHOTT. That is correct, sir. Unless you want to wait for the courts to do this, but I think that is not the preferable route because of the time that it would take for this to wend its way through the courts and for the Supreme Court to act on it.

Senator MATHIAS. Would you want to speculate on how the courts might come out if we did follow the litigation route?

Mr. SCHOTT. I don't know what good that would do, but I would be pleased to do so.

I think that the——

Senator MATHIAS. Well, you have just said that we are in trouble. You have just said that we have a problem, and I think we need to look at all the alternatives.

Mr. SCHOTT. To answer that, then, I think that ultimately the Supreme Court would find that the Home Rule Act would stand, that debt issuances by the District would be valid and the District's authority to issue and incur that debt would be valid obligations of the District of Columbia.

However, the time that it would take to get that resolution would pose great difficulty for the District.

Senator MATHIAS. In other words, you think the *Chadha* problem embedded in the Home Rule Act would be declared severable?

Mr. SCHOTT. Yes, sir.

Senator MATHIAS. Well, now, to be a little more specific, you say you concur with bond counsel that there is an existing problem. How does that affect the status of long-term borrowing authority?

Mr. SCHOTT. The Home Rule Act took away the District's authority to borrow long term from the Treasury Department, however, in the Budget Reconciliation Act of 1981, there was temporary authority granted to the District to borrow from the Treasury on a

long-term basis for capital needs. That authority, however, expires on September 30 of this year, and no new authority has been requested, therefore, as of September 30 of this year, there will be no new authority for the District to borrow long term from the Treasury and the Treasury would have no other basis upon which to lend to the District.

Senator MATHIAS. Do you find a different problem with regard to short-term borrowing?

Mr. SCHOTT. That is correct, Mr. Chairman.

The District's ability to borrow short term is in a different section which was not amended by the Home Rule Act and that provides that the District may borrow as necessary from the Treasury Department for short-term needs.

Senator MATHIAS. Now given what you have said and given the fact that it is clear that the District cannot obtain certain funds independent of the Treasury until the *Chadha* problems are resolved one way or another, either by legislation or by litigation, is the Treasury prepared to keep the windows open, both long term and short term? That is the $64,000 question: Are the windows going to stay open? That is the question that is going to determine whether we have a crisis or whether we don't.

Mr. SCHOTT. Mr. Chairman, the District's authority, as I stated before, to borrow on a short-term basis is not affected by the Home Rule Act. However, the long-term authority has been terminated with the exception of the Budget Reconciliation Act of 1981 which provided a 3-year window period during which the District could continue to borrow.

On a long-term basis, the Treasury simply has no authority or other ability to lend long term to the District of Columbia.

On the short-term basis, however, the Treasury continues to have authority to make short-term loans on an as-needed basis, and that is dependent upon the ability of the District to obtain funds elsewhere.

Senator MATHIAS. Are you willing to keep not only the long-term window open, but the short-term window open as well. Will that be the Treasury's policy?

Mr. SCHOTT. The Treasury has not formulated a final position on this, primarily because we fully intended that the *Chadha* would be resolved by Congress.

Senator MATHIAS. Well, may I suggest to you that the Treasury better formulate a policy on this because, while I fully intend that this committee will do its duty under the Constitution, and exercise its authority and its responsibility under the Constitution, there are a lot of urgent things that the Congress ought to do that do not get done as soon as I think they ought to be done.

The Treasury better come face to face with the fact that it may have a problem on its hands of an urgent nature. That is why I am sorry the President didn't send one of his White House assistants down here, so that the White House could be fully informed on the possibilities that lie ahead.

I hope that you will take the message back to the Treasury Department that they had better face up to the fact that we are working on the problem, but that we are a long way from solving it. The 30th of September is barreling down the road.

Mr. SCHOTT. Yes, sir; I will be glad to do that.

Senator MATHIAS. Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman. I apologize for being a bit late. I don't want to replow old ground. I will try not to duplicate your line of inquiry.

What is the outstanding balance of long-term borrowing?

Mr. SCHOTT. $1,768,000,000, Senator.

Senator EAGLETON. Again, what are the terms of the borrowing—interest balance, amortization schedule, payment schedule and the like?

Mr. SCHOTT. I don't have that information with me, Senator. I would be pleased to submit it for the record, if you wish.

Senator EAGLETON. Fine.

Senator MATHIAS. Without objection, the record will remain open to receive that information.[1]

Senator EAGLETON. You are aware of the D.C. Code, section 47-3401, which authorizes the Mayor and the District to request "any money in the Treasury as may be necessary from time to time to meet the general expenses of said District."

How does your policy mesh with that law, which was codified in 1937 and was based on a predecessor statute passed as far back as 1922?

Mr. SCHOTT. I am sorry, sir; what do you mean—our policy?

Senator EAGLETON. Well, the policy of closing the window.

I will read from the statute again, the excerpt from it, 47-3401 authorizes the Mayor of the District to request "any money in the Treasury as may be necessary from time to time to meet the general expenses of said District." As I said, the law goes back as far as 1922.

Mr. SCHOTT. Yes.

Senator EAGLETON. Having closed the window, how do you square that with this excerpt from the statute that I just read?

Mr. SCHOTT. First, Senator, I should point out—I don't believe that the Treasury has closed that window.

Senator EAGLETON. If you do close it at sometime in the predictable or foreseeable future?

Mr. SCHOTT. I am not aware of any intention to close it. The statute provides that these short-term advances are available as necessary. That has been interpreted to mean that money is not available elsewhere to the District. This is what brought about the Sidley & Austin bond counsel who said that they could not give an unqualified opinion in light of the *Chadha* decision.

Senator EAGLETON. Correct.

Mr. SCHOTT. The District was able to go to a private lender with an arrangement provided for by the Treasury wherein the Treasury Department agreed to pay directly to that lender any funds that were owed by the District in the event that the District was, as a result of a *Chadha* decision, precluded from doing so.

Now, this case——

Senator EAGLETON. If in the future the District seeks to go to a private lender and a private lender says, "No, this *Chadha* nightmare just boggles our minds, and as much as we would like to do

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[1] The material referred to was never received, despite staff requests for it.

business with you, we are going to decline, based on the *Chadha* dilemma." Then would the Treasury window be open?

Mr. SCHOTT. In essence, Senator, that is what happened in December and January, December of 1983 and January of 1984. Private lenders were quite willing to accept the credit risk associated with making loans to the District. They were, however, not willing to accept the risk that an invalidity determination would be issued against the District, that is, that the District had no authority to enter into these obligations.

Based on that one reservation, bond counsel was able to issue an opinion that the bonds would be valid but for the *Chadha* decision. Treasury backed up the District by agreeing—in a series of letters between the Mayor and the Secretary of the Treasury agreeing to make payment on behalf of the District under the authority of section 3401 in the event the District was precluded from doing so as a result of a *Chadha* decision.

Senator EAGLETON. Will the lenders, in your opinion—you study these things—be willing to do that again?

Mr. SCHOTT. I see no reason why not.

Senator EAGLETON. And if they won't, and if they say that one time is enough, and that they are too nervous, too apprehensive and that there are too many questions relating to *Chadha,* then the Treasury window would be open; is that right?

Mr. SCHOTT. I can't speak for the Secretary, but I believe that Treasury would then consider making direct advances.

Senator EAGLETON. This last question is just for the record.

We have all been very supportive of the District's financial independence and have all hoped that the city could cut loose from the Treasury. Congress, after all, authorized $38 million a few years back for the Temporary Commission on Financial Oversight of the District of Columbia. I happen to have chaired those hearings between 1976 and 1981. They totally revamped and modernized the city's financial structure. The city, as a result, has turned in 4 years of clean audits and, as I understand it, was expecting a high bond rating.

So, let me ask this. It is not the city's fault, is it, that the Supreme Court ruled as it did in *Chadha*?

Mr. SCHOTT. That is correct, Senator.

Senator EAGLETON. The city has committed no sin, nothing for which it should be punished. It happens to fall under the *Chadha* decision; isn't that correct?

Mr. SCHOTT. That is correct.

Senator EAGLETON. So, I got in on the tag-end of a question from Senator Mathias to you, and perhaps I didn't hear it correctly, but I inferred from that previous Mathias question that the administration is seeking to justify the closing of the city's borrowing from the Treasury so long as the *Chadha* problem remains.

Did I misinterpret that exchange between you and Senator Mathias? I hope I did.

Mr. SCHOTT. I believe you did, Senator.

Senator EAGLETON. If in fact you will not ultimately close the window, why is it you are requiring the city to go to a private lender at a higher rate and with greater administrative costs in so doing?

Mr. SCHOTT. Are you talking about long-term lending or short-term lending, Senator?

Senator EAGLETON. I guess it will be a mixture of both, won't it?

Mr. SCHOTT. All right, then I will answer, but, first of all, the long-term borrowing authority that the District has requires that interest be paid at Treasury's long-term rates. If the District were to go to market, it would be able to offer its obligations at a tax-exempt rate, which would be a much lesser interest rate than Treasury is required to impose upon its borrowings, like the District.

On a short-term basis, its borrowings would, for the same reason, be cheaper than rates the Treasury would require to be paid.

And I should point out that in going to a private lender, the Treasury has imposed no fees or charges or interest. These would be incurred only if the Treasury would be required to make payment on behalf of the District.

Senator EAGLETON. That is not exactly the way I have been told it.

Is Mr. Hill here? Mr. Chairman, may I ask Mr. Hill a question?

Senator MATHIAS. Certainly.

Senator EAGLETON. Mr. Hill, identify yourself for the record, please.

Mr. HILL. I am Alphonse Hill, Deputy Mayor for Finance for the District of Columbia.

Senator EAGLETON. You have heard my question to the witness and his answer thereto.

Does that answer square with what you think are the facts in this matter, insofar as where you can get the cheapest money?

Mr. HILL. Not completely, Senator.

I believe his assessment of the long-term borrowing is much more accurate. I think we can go to the market and get long-term money at a cheaper rate than we can at the Treasury.

Senator EAGLETON. Correct.

Mr. HILL. The circumstances on the short-term money—historically, we have borrowed up to $140 million from the Treasury, and that has always been at no interest, or no cost to the District in accordance with the section 47-3401 of the District of Columbia Code which, I believe, the chairman read earlier. We have never paid any interest for that money. It is within the very recent past that the Treasury has stated that their position is that there will be fees assessed on short-term borrowings, and it is also the Treasury's recent position, with respect to short-term borrowing, taken that section 47-3401 of the District of Columbia Code requires a credit-elsewhere test, in essence, which makes us like a Small Business Administration loan applicant. We have to go to banks and attempt to borrow and have them say, "No" to us, and then we should take this evidence to the Treasury to demonstrate to them that we cannot borrow the money in the marketplace.

In essence, under Treasury's current interpretation, Treasury is saying, "We may stand behind your credit, but will not loan you the short-term money directly." Treasury is still not loaning us the short-term money or providing the funds. They are telling us, "We will make an accommodation with a financial institution and the

financial institution will charge interest, yet the statute calls for no interest payments to the Treasury."

I will say to this body that that, Treasury's current interpretation, is a most cumbersome way for us to do any kind of financial planning for the District of Columbia. We have to go almost to the brink of collapse before we are able to demonstrate that we need the money. Financial planning is very, very difficult for us under those kinds of circumstances. We need to know what the game rules are in borrowing money and in financing the District of Columbia, and at times it is not certain and with the *Chadha* cloud, I think it is today one set of parameters and tomorrow another. This is what is frightening to me in terms of trying to contain and manage a $2 billion entity.

So, I think his assessment on the long-term borrowing is accurate. The assessments on the short-term borrowing, Senator, I am not too sure what the Treasury's position will be this fall when we need short-term borrowing. It seems to change when it is convenient.

Will they stand behind us in terms of borrowing from the bank? Will they provide the money? If *Chadha* is not cleared up, I am not too sure. Only the District of Columbia Code is in writing. Their rules and procedures toward the District are always matters of interpretation.

Senator EAGLETON. Mr. Schott, will you?

Mr. SCHOTT. I am not in a position to speak for the Secretary——

Senator MATHIAS. That is the very question that I have asked Mr. Schott to take back to the Department.

Mr. SCHOTT. And I have agreed to do that.

Senator MATHIAS. I have urged his associates in the Department to address this problem very seriously.

Mr. SCHOTT. I would point out to the committee that the long-term question is a serious one because Treasury simply has no authority to make long-term loans beyond September 30 of this year when statutory authority to do so expires.

With respect to the short-term lending, Mr. Hill correctly points out that Treasury, in interpreting section 3401, has applied a credit-elsewhere test, but in so doing, we look at the terms of the statute, and in particular those sums as may be necessary from time to time.

Fiscal year 1983 was the first year that the District's financial house was in order in order to go to market, and they had done all the necessary steps to do so. They had hired the financial advisors, underwriters, bond counsel, and were perfectly prepared to do so, and as you, Senator, pointed out, but for the *Chadha* decision, which was not their fault, they would have done so. They would have gone to the private market and made the borrowings necessary for their short-term needs.

However, given the fact when you look at the statute and the determination is "as necessary"—"if credit is not available elsewhere." Having looked at that, we imposed that requirement on the District in examining their situation this year; nonetheless,

made the backup for the District in order for them to get the loan from the First National Bank of Chicago.

Senator MATHIAS. Thank you very much, Mr. Schott.

Mr. SCHOTT. Thank you.

[A letter, with an attachment, dated May 2, 1984, to Senator Mathias from Mr. Hill, received subsequent to the hearing, follows:]

37-924 O—84——4

THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

ALPHONSE G HILL
DEPUTY MAYOR FOR FINANCE

2

Honorable Charles McC. Mathias
Chairman
Subcommittee on Governmental Efficiency
and the District of Columbia
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

The hearing held last Wednesday by the Subcommittee on Governmental Efficiency and the District of Columbia provided a critical re-examination of the CHADHA problem, as it severely and uniquely affects the District of Columbia. Your efforts to correct this problem have been most helpful.

During the time that I was at the witness table with Mr. Allan Schott, Assistant General Counsel, Department of the Treasury, a question was raised as to the current Federal policy on the availability of U.S. Treasury financing in FY 85 in the event that the CHADHA problem continued to preclude the District from from borrowing in the market. In other words: If CHADHA is not fixed, will the Treasury window be open?

I feel it is both necessary and appropriate to add my comments to those that the Treasury was requested to provide, because proper consideration of this matter must take into account the longstanding Reagan Administration policy on the District-Federal debt financing relationship and recent relevant actions by the Office of Management and Budget.

Reagan Administration Policy

Since 1981, Reagan Administration policy on the District-Federal debt financing relationship has been clear, often enunciated and firmly on the record, as the excerpts appended to Mayor Barry's Subcommittee testimony illustrate. Let me paraphrase this long-standing policy as follows:

The Reagan Administration strongly supports the efforts of the District to enter the bond market, based on these fundamental premises:

Federalism. Federal involvement should be reduced in matters more properly conducted by local governments.

Borrowing Authority. Pursuant to the Home Rule Act, the District has the legal authority to manage its own finances.

Financial Capacity. The District has improved its financial management and self-sufficiency to support bond market entry.

Until adequate access to the bond market is attained, the District may need to continue to borrow from the Treasury.

Except for viewing the first premise from a Home Rule perspective, the District's policy on debt financing agrees in principle with the foregoing. In fact, a year ago we began work for our first general obligation bond and note issues, at that time planned for FY 84.

However, since June 1983, CHADHA has effectively subverted our statutory borrowing authority. Continuance of long- and short-term Treasury financing until this market barrier is removed is eminently consistent with District and Reagan Administration policy.

Treasury Capital Project Loans

Section 723 of the Home Rule Act authorizes the Secretary of the Treasury to make loans for capital projects previously authorized by Congress, during an interim period intended to extend to the time when the District could enter the bond market under its statutory borrowing authority. At the end of FY 84, there will be well over $300 million of unfinanced capital project authority approved by Congress.

Section 723, however, also limited Treasury capital loans in any fiscal year to the "extent or in such amounts as are provided in appropriation Acts."

Mr. Schott has testified that the Treasury (based on the President's FY 85 budget) will have no authority to make such long-term loans in FY 85. As far as this goes, it is not technically incorrect.

However, the District requested an FY 85 appropriation of $155 million for Treasury capital project loans against the possibility that the CHADHA barrier to bond financing would not be resolved on a timely basis. Contrary to longstanding Reagan Administration policy, OMB ignored the inability of the District to enter the market in the face of CHADHA and refused to include this loan appropriation in the President's FY 85 budget.

If remedial legislation addressing the CHADHA financing problem, at a minimum, is not enacted soon, the District must rely on Treasury capital project loans or terminate its capital program in FY 85. If the Reagan Administration cannot make budget proposals consistent with its own policy on District-Federal debt financing and the reality of the CHADHA problem, then the Congress will be left to act on the Federal responsibility for providing an FY 85 capital loan appropriation in the District's appropriation act.

Treasury Advances

For most of this century, the D.C. Code (Section 47-3401) provided the authority for the District to receive short-term financing from the Treasury "as may be necessary, from time to time, to meet the general expenses of said District, as authorized by Congress." This type of financing is typically used to meet seasonal operating cash flow financing needs each fiscal year.

Mr. Schott has testified that such authority continues to exist and, therefore, the Treasury will be available to provide such short-term financing. This observation, while again not technically incorrect, is too narrow.

When it became clear that CHADHA would prevent the District from financing its FY 84 seasonal cash flow needs, as intended, through the first issuance of general obligation revenue anticipation notes, we requested Treasury advances in accordance with standard practice. The Treasury insisted, for the first time ever, that the District prove that there was no "credit elsewhere" as a criterion of necessity.

The District strenuously disagrees with the novel interpretation and application of a "credit elsewhere" test in this statute. Nonetheless, we provided the Treasury with written confirmation from four national financial institutions that they could not underwrite or purchase the notes in the face of the CHADHA problem. Again the District requested a Treasury advance and again Treasury refused.

Finally last February, to avert a total collapse of government operations in the nation's capital, we were able to work out a complicated arrangement wherein the Treasury would pay the District's lender in the event that the District itself were legally incapacitated from doing so by virtue of CHADHA litigation.

This kind of brinksmanship by the Treasury (which resulted in a $40 million deferred payment to the District-administered retirement funds) does not comport with standing Reagan Administration policy and is manifestly questionable under any reasonable and historical reading of the statute. More acutely, the application of nebulous and delaying hurdles to even this limited Treasury involvement in ensuring orderly District financial operations is dangerously poor practice.

If the District cannot avert payless paydays next time, we are realistic enough to know that such an eventuality will substantially harm our prospective ability to enter the municipal debt market even after CHADHA in all its manifestations is resolved. As long as CHADHA prevents the District from financing in the market, an explicit requirement for the Treasury to make advances according to historical precedent needs to be made.

Conclusion

Senator Mathias, Congress is ostensibly a partner with the District in the authorization of the capital and operating spending for the nation's capital. If this role is to be anything more than empty, Congress cannot ignore the fact that CHADHA prevents a critical portion of that spending from being financed as necessary.

For four years, the Reagan Administration has made a show of having a reasoned policy on the District-Federal debt financing relationship. Yet, for obscure reasons in the face of CHADHA, the behavior of the Treasury Department and OMB has not followed financial logic and has not comported with this policy.

Given the Reagan Administration's continued lack of forthrightness in facing up to impending financial calamity and long-term damage for this city, Congress must take immediate and reasonable action. I urge you, at least, to further consider the November 17, 1983, proposal which would remedy the CHADHA financing problem in a rational manner, without prejudicing the final substance of the District-Federal criminal justice relationship.

I am more than willing to answer any questions and to further discuss this urgent matter at your convenience.

Sincerely,

Alphonse G Hill

cc: Hon. Thomas F. Eagleton

REAGAN ADMINISTRATION POLICY
ON DISTRICT-FEDERAL DEBT FINANCING RELATIONSHIP

The Administration strongly supports the efforts of the District of Columbia Government to manage its own financial needs. Pursuant to provisions of the Home Rule Act, the District Government is moving toward entry into the private capital market through expanded and improved control over its financial resources. These developments complement one of the major themes for the President's 1984 Budget, namely, to reduce Federal involvement in matters more properly conducted by local governments.

-- R. T. McNamar, Deputy Secretary of the Treasury; letter to The Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives (05/18/83)

* * *

The Administration strongly supports the District's efforts to manage its own finances, pursuant to the provisions of the Home Rule Act...

The Administration strongly supports the District's efforts to enter the bond market as soon as possible. It opposes any efforts to discourage this entry, or to prolong any longer than absolutely necessary the District's artificial dependency on Treasury... [The Administration's view of federalism] holds that financial responsibility rests with those jurisdictions with the legal authority to manage their own finances. The District generally has that power, and its decisions in the exercise of that power should be encouraged by the Federal government.

-- Robert W. Rafuse, Jr., Deputy Assistant Secretary (State and Local Finance); U.S. Department of the Treasury, statement before the Committee on the District of Columbia, U.S. House of Representatives (09/16/82)

* * *

The purpose... is to eliminate the Federal Government's role as a financial intermediary in District affairs, which results in credit market distortions. [The proposed legislation] is consistent with the Administration's objective to reduce Federal involvement in the affairs of local government. The Office of Management and Budget believes the elected officials of the District Government should manage their own affairs. A

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part of this, of course, is to terminate the District's dependence on the Federal Government for its borrowing requirements. In this connection, OMB strongly supports the efforts of the District of Columbia Government to enter the private bond market. This would enhance the financial independence of the District and reduce its borrowing costs.

The Office of Management and Budget understands that the District may need to continue to borrow from the Treasury until adequate access to the bond market has been attained.

-- James M. Frey, Assistant Director for Legislative Reference, Office of Management and Budget; letter to Barbara C. Washington, Office of Intergovernmental Relations, District of Columbia (05/20/82)

* * *

The Administration supports the efforts of the District of Columbia Government to enter the bond market. We believe that the elected officials of the District Government should manage their own affairs. Accordingly, the authorization for the sale of long-term debt in the marketplace should be made available, as an option, to the District...

Assuming a successful entry into the bond market by the District, it would both enhance the financial independence of the City and reduce the cost of borrowing for the local government. This also would be consistent with the policies of this Administration to eliminate the Federal Government as an unnecessary financial intermediary, and to reduce Federal involvement in the affairs of local government.

-- David A. Stockman, Director, Office of Management and Budget; letter to the Honorable Stewart B. McKinney, U.S. House of Representatives (11/04/81)

* * *

The Administration strongly supports the District's efforts to manage its own finances pursuant to the provisions of the Home Rule Act, including... the District's efforts to enter the long-term public marketplace...

The District has been embarked on Home Rule for several years now and, despite difficulties, has made respectable progress toward self-sufficiency. As a matter of principle, the Administration believes that the District should be managing its own finances.

...this Administration is committed to normalization of the District's financial relationship with the Federal government.

-- Roger W. Mehle, Assistant Secretary (Domestic Finance), U.S. Department of the Treasury; statement before the Committee on the District of Columbia, U.S. House of Representatives (05/20/81)

* * * * *

Senator MATHIAS. Our final witness for the day is the U.S. Attorney for the District of Columbia, Mr. Joseph diGenova.

It is a personal pleasure for the Chair to welcome Mr. diGenova back to Capitol Hill, back to his old haunts. I think it is valuable that he is here because he has intimate knowledge of the operation of the Congress, and he now carries serious responsibilities in the executive branch of government. So he has comprehensive view of the nature of this problem.

But I must say to you, Joe, that you carry a heavy load here today because all of the might, majesty, dominion, and power of the Federal Government is resting on your shoulders. We have not had direct expression from the White House. We appreciate Mr. Schott's testimony, but he said, very frankly, that the Treasury has no policy, so it is all up to you.

TESTIMONY OF JOSEPH E. diGENOVA, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA, U.S. DEPARTMENT OF JUSTICE

Mr. DIGENOVA. Good morning, Mr. Chairman.

It is, of course, an honor for me to be here, but it is more than that—it is a personal privilege to be back in the U.S. Senate this time as a witness. I am delighted to be here this morning, and I am delighted to be in front of you and Senator Eagleton.

It is rare that a witness before any congressional committee has the opportunity to dispense mercy. However, I will try to do that this morning with the permission of the Chair by submitting my prepared statement rather than reading it.

Senator MATHIAS. You are already showing the value of your congressional experience.

Without objection, your statement will be included in the record.

Mr. DIGENOVA. I thank the Chair.

As Mr. Atherton drew the drapes earlier in the proceedings and the sun shown through, I thought of what Congressman Fauntroy had said earlier as he described the process by which this bill has found its way to this committee as going from gentle rain to acid rain, and I hope that this morning that I will be able to bring some light and some sunshine onto the issue which is bothering this committee and, of course, the Federal Government as a whole, and the city in particular.

By doing that, I hope to discuss a compromise which I know the Chair is interested in because it seeks a resolution of the issue. Let me just say that the Department of Justice was placed in the position of having to, as matter of law because of its requirements under the Constitution, analyze the effect of the unprecedented *Chadha* decision in June 1983 and to determine what effect, if any, that decision would have on the Home Rule Act.

It was the decision of the Department, after a very serious review at the highest levels, that *Chadha* applied and that it struck down the legislative veto provisions which Congress had put into the Home Rule Act as a means of controlling, overseeing, and otherwise seeing to it that the Federal interest was being protected in the civil and criminal area.

In response to that, we, of course, reviewed the matter and attempted in the context of the *Chadha* decision to assist the Congress by rendering our decision as to what that decision meant.

That was a good-faith effort to analyze the ultimate effect of *Chadha* on the Self-Government and Self-Regulation Act.

It is apparent to the Department that *Chadha* does apply literally to the Home Rule Act because a reading of the *Chadha* decision simply permits no other view. The Supreme Court in *Chadha* was dealing with procedure and not with subject matter. It was dealing with the way Congress enacts laws.

Having said that, however, that really gets us to the issue of how should the 1974 act be amended so as to comport with *Chadha* and to permit the city to do its business as it must and to still retain for Congress that degree of review and discretion which we believe it must have if the Federal scheme of the seat of government is to be maintained.

Now, as I have indicated in my prepared testimony, the Department takes the position that the question to be posed is: What is the post-*Chadha* equivalent of a one-House veto in the area of the criminal law?

I need not tell either of the members of this committee, who were so intimately involved in the drafting of the Home Rule Act, that the Senate saw fit to include criminal legislation authority in the original version of the Home Rule Act. The House completely eliminated it. There was a compromise in which in the area of the criminal law a one-House legislative veto was put in ostensibly for the reason of stopping something if Congress was disturbed about it.

With that history and given the indication that at least some parts of Congress intended to continue to retain at least a semblance of that kind of oversight, the Department's view was that the only equivalent of a one-House veto, which would comport with *Chadha,* was a joint resolution of approval after the *Chadha* decision, and that simply meant that, therefore, if either House failed to approve a piece of criminal legislation from the city council, obviously that would be the legal equivalent of a one-House veto.

We have met with D.C. officials, the Mayor, members of the city council, their lawyers and their senior staff members—all of whom, each and every one of them has tried valiantly to come up with very responsible positions. I have represented the Department and the administration in almost all of those meetings and have, I hope, demonstrated likewise an intention to be flexible, to be responsible, and to attempt to address an issue which obviously is of some moment to the city and to the Congress.

In his letter of March 14, 1984, in which the Acting Attorney General did, indeed, say that they felt that the expedited procedures compromise, which had been proposed by the city, was not acceptable, Mr. Jensen did propose something which I believe—and I know the administration believes—is in fact the sunlight which I alluded to earlier, and that is this: The administration is prepared, as it indicated in its letter, to compromise on this issue to the following extent. It agrees with the intent and the general perimeters outlined in S. 1858. The joint resolution of disapproval, as a mecha-

nism for dealing with legislative actions by the city council, is acceptable.

And, indeed, at this point the department is willing to extend the joint resolution of disapproval mechanism to all of the enactments of the city council, including the criminal code, titles 22, 23, and 24—with this exception.

It would propose to retain only this minimal amount of Federal review of those acts. The proposal is that there would be a joint resolution of disapproval for every piece of legislation, both civil and criminal, except that if the Attorney General were to certify in writing to the Speaker of the House and the President pro tempore of the Senate that the administration objected to a particular bill, in the criminal law area only, then that would trigger the requirement for a joint resolution of approval, but only in those instances.

Now, let me, if I might, explain to the committee why that is, indeed, a very fair proposal. As was indicated in the chairman's own statement, there have been, I believe, approximately 800 instances in which bills have been possibly subject to a legislative veto by the Congress, and there have been only two instances in which that has been exercised, and I believe the chairman's mathematics indicated that that was 0.25 percent.

It appears to the administration—and indeed it appears to me—that if that record of lack of opposition from both Republican and Democratic administrations over the years is any indication of the kind of responsibility that has been exercised not only by the Congress but by various attorneys general and various Presidents, that it is, indeed, unlikely in the future that that 0.25 percent will not remain the standard; it will remain the standard, in my view.

Therefore, giving the Attorney General in this area of obvious Federal interest, which is in fact what is being legislated in the area of the criminal law, in this one area where there is literally a miniscule mechanism for legitimately raising an issue, I think that that is, indeed, a compromise worthy of consideration by this committee. It is one which we have discussed preliminarily with the city. They have not embraced it, in all candor. I would be less than candid if I did not say that to the committee.

But I am not at all certain that upon further thought and, indeed, further meetings that it cannot be ultimately a remedy for this extremely difficult situation that the city, the Congress, and the Department find themselves in.

So, Mr. Chairman, without taking up any more of the committee's time in addressing your initial question, which is, why are we here. We are here because it is Congress' prerogative to do what it chooses in this area, as it deems appropriate. The Department seeks only to advise the committee, as it has done in the past, that its view is that this particular compromise certainly would give a kind of home rule that goes far beyond even anything contemplated by the original 1974 act and would reserve a kind of restraint on the executive branch even in objecting to anything that it chose to do so to such an extent that we believe it is an eminently reasonable compromise and goes far beyond what the administration originally advised the Congress it would do in this area.

With that, Mr. Chairman, I would be delighted to answer any questions you and Senator Eagleton might have.

Senator MATHIAS. Let me start by referring to your written statement in which it is pointed out that the *Chadha* case brings into focus a constitutional problem of the Home Rule Act.

By that, I am assuming that the Department of Justice is not calling into question the constitutionality of home rule but is merely raising the question about the legislative veto.

Mr. DIGENOVA. That is correct, Mr. Chairman.

The Department has taken the position that the legislative veto provisions in the Home Rule Act are unconstitutional but that they are severable from the otherwise constitutional delegation of authority from Congress to the city.

Senator MATHIAS. The Department of Justice, as you stated in your written statement, has taken the further position that, in general the legislative veto mechanism is employed to balance conflicting legislative and executive interests.

That is a valid point, but I question its application with respect to the District. As we have said repeatedly this morning, Congress is vested with constitutional authority to legislate for the District, exclusively. The way we choose to delegate that authority, the mechanism for review or the use of that authority at the local level are called into question only because, as the Supreme Court points out in *Chadha*, the President cannot be absent from the legislative process. In other words, when Congress enacts a statute, it needs the President's signature on it.

Now, Senate bill 1858 would write the President into the process, would make the President a part of the process. As I said earlier, it is an anomoly of our doctrine of separation of powers that however carefully we separate powers, we provide exceptions. This is one of them.

We would write the President into the process, and the Justice Department asserts that this would make for greater independence for the city.

Somehow or other, it is hard to close that circle, and I am wondering about this. You bring the President in as a new actor in the scene, and yet you end up with more independence.

Mr. DIGENOVA. Is this in terms of the—I think——

Senator MATHIAS. That is S. 1858.

Mr. DIGENOVA. I think in terms of *Chadha* that—I believe what the legislation attempts to do is to comport with the *Chadha* requirement that Congress pass a resolution by both Houses, identical in form, obviously, and then present it to the President for his signature, which he may then veto.

That is the degree to which under S. 1858 he would be involved, aside from his ability through his adminstration representatives to lobby against or for a particular resolution, depending upon what it would be.

Other than that, the compromise which I have addressed in terms of, No. 1, the joint resolution of approval, the first proposal that the Department made, is nothing more than a changing of the legislative mechanism and would still require the presentment to the President, as would a resolution of disapproval be required to be presented to the President.

So, in that sense, there is literally no distinction between the two mechanisms vis-a-vis the President but only a distinction in terms

of what Congress must do in terms of form before it would be presented to the President.

Senator MATHIAS. You have talked about one possible solution to this problem in setting up a trigger mechanism by which the Attorney General would identify certain purely criminal matters in which there was a Federal interest.

Mr. DIGENOVA. That is correct, Mr. Chairman.

We would call that, for purposes of our discussion, a certification method.

Senator MATHIAS. As you heard this morning, the Mayor wasn't very enthusiastic about that idea.

Mr. DIGENOVA. Well, Mr. Chairman, I can only say that, as in many instances, at first blush sometimes when we hear things we are not particularly pleased by them if we have a certain goal in mind, but as I frequently heard when I was here, "Let us reason together," I certainly think that the proposal which comes in—and I must say that I am not sure it has been understood fully.

Senator MATHIAS. That is the very point I want to make.

What standards would the Attorney General use in determining that there is a Federal interest? I can understand the mayor's concern if anything that falls within the purview of criminal law is open to the Attorney General.

If there were some standards that would identify what a Federal interest really is, it might alter the case to some degree.

Mr. DIGENOVA. I certainly understand the question, Mr. Chairman. I don't know that I am prepared to answer that particular point, other than to say that obviously for some time the Attorney General has been able to define what that Federal interest might be because he has, from time to time, given his opinion to Congress when resolutions of disapproval have been introduced by individual Members and has taken positions one way or the other.

It seems to me that, as I indicated earlier, your own statistics indicate a kind of restraint that Congress and the executive branch have exercised in the area of local criminal law that bodes well for reposing that kind of discretion, which I do not believe is unfettered, in the Attorney General because I believe that it has been clear over the last 11 years that Attorneys General of both parties have acted extremely responsibly in responding to the city council, in responding to Congress on questions when issues were raised, and, of course, I know that you are familiar with the areas outside the criminal law, such as the Chanceries Act, which was one of the two instances in which Congress actually overturned an action of the city council, which indicated a clear interest of the Federal Government in something that the city council had done.

I tend to place a great deal of faith myself in the good faith of individuals holding positions at the Federal level, and I tend to think that the kind of history and record which is indicated by the only two resolutions of disapproval that have passed the Congress is one that bodes well for the triggering mechanism which I have outlined this morning.

Senator MATHIAS. I want to yield to Senator Eagleton in a moment but let me pursue this process one more level.

How would you cope with the natural incentive that would be generated within the city council to avoid this trigger by alterna-

tives to criminal sanctions. To give you a specific example, initiative measure No. 6, the law legalizing lotteries, contains criminal sanctions. But it might have been possible to draft that with civil fines, civil penalties so that it would have avoided the trigger.

Mr. DIGENOVA. Mr. Chairman, obviously the law is capable of being subjected to all manner of creative thinking and, of course, the legislative process, of which we are partaking today, is in no small way an example of the ways that human beings can try to fashion remedies for complex problems. If there is no criminal penalty in a piece of legislation, obviously the U.S. attorney, insofar as it involved prosecutions would not be involved, and, therefore, the Attorney General would not be involved in rendering a judgment as to whether or not it ought to be subject to disapproval or approval by the Congress. There is no perfect answer, I believe, to any of these solutions. If the city council sought to circumvent, for example, Congress' review authority by decriminalizing an entire mode of behavior, I would think that, notwithstanding the Attorney General's ability to interpose an objection legally, that Congress would interpose one itself, if it were a subject matter about which it felt strongly.

Senator MATHIAS. There are similar problems, of course, that could arise. The city has a Child Restraint Act which penalizes failure to use child restraint seats in certain situations in the District. The penalties are imposed under the Traffic Adjudication Act and, therefore, they are not criminal.

But the air quality regulations are enforced by criminal penalties.

Do you see any difficulties in this kind of ambiguity?

Mr. DIGENOVA. None whatsoever, Mr. Chairman. That is a legislative policy judgment being made by the city council, and if they choose to decriminalize an area, then that would be an area which I would think, in an area where there was a new piece of legislation and where there was no preexisting criminal law in the area and it was a new policy area, such as child restraint and the city council legislated originally and decided it was going to be civil penalties or the kind of penalty which would only be enforceable through the Corporation Counsel being the prosecutor, then there would be no discernable Federal interest in that at all.

Senator MATHIAS. And, under those circumstances you don't think the Attorney General would say, "Well, I am going to sweep aside this veil of fiction where the District is taking a traditionally criminal act and calling it a civil act"?

Mr. DIGENOVA. Mr. Chairman, like all good Attorneys General, he would be bound by the law, and I am sure he would follow it.

Senator EAGLETON. Sometimes.

Senator MATHIAS. Well, I won't comment on that. [Laughter.]

Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman.

Let's backtrack in history, Mr. diGenova, so that we put this in its proper perspective. Let's put *Chadha* aside for a minute and talk about the 1974 Home Rule Act.

You are correct, in part, that there was a "compromise" effectuated with respect to criminal laws. The Senate-passed version of the Home Rule Act—and I was manager and author of the act,

strongly supported by Senator Mathias and others—ceded total jurisdiction to the District of Columbia government over criminal laws. It was a broad grant of home rule.

The House version was somewhat more restrictive in several regards but was certainly more restrictive with respect to criminal law.

A compromise was achieved. Not a perfect one; all compromises are in a sense arbitrary. This was the compromise: With respect to criminal laws, the Congress would retain total jurisdiction for 2 more years from 1974 to 1976, after which, if nothing intervened—no subsequent act of Congress—jurisdiction over criminal laws would go to the District of Columbia with a one-House legislative veto. As it was, we amended the Home Rule Act in 1976 and extended congressional control over District criminal laws for another 2 years—until 1978—at which point we let all direct congressional authority lapse.

As you pointed out in your testimony, we have exercised, that is, we, the Congress, that one-House legislative veto over criminal laws once. In the sexual assault situation, the House voted a veto. To tidy up the record, we have exercised it once in a differing provision in the civil area, where it required a two-House response in the Chanceries bill.

So, if *Chadha* hadn't come along and, as the previous witness from the Treasury testified, *Chadha* is not the fault of the District, and I am sure you concur in that; if *Chadha* had not come along, the District of Columbia, insofar as criminal laws are concerned, would have, by my reckoning, 99-percent home rule. There still would be that one-House veto that could be exercised. Bear in mind that the District has enacted, since home rule, nearly 800 laws, if our figures are right, and only twice in the two instances aforesaid have we moved, that is, we, the Congress, moved to intervene.

I think that states the history.

Then came *Chadha*. Everything is in an uproar, not only in the context of the District of Columbia, but as it affects hundreds of other statutes.

What you are proposing on criminal laws is to take the District from 99 percent, or to use Ivory Soap, 99 and 44 one-hundreths percent home rule over criminal laws, and drop it back to 85, or 75, or some lower percentage, depending on how one evaluates it. What you are saying on criminal laws is that the statutes are frozen; the criminal statutes as they pertain to the District of Columbia are frozen unto perpetuity, and if the council wants to change one of them, wants to increase the penalty for armed robbery, wants to decrease the penalty for larceny of a motor vehicle, whatever, it can move to make that change, but before that change can become operative, both Houses of Congress must approve it, the President of the United States must sign it——a potentially cumbersome, protracted, time-consuming, time-delaying process.

Why is it that for all practical purposes you want to freeze perpetually the criminal code of the District of Columbia?

Mr. DIGENOVA. Senator Eagleton, may I just say that that certainly is not the intention of the original proposal which the Department made in response to the *Chadha* decision which was——

Senator EAGLETON. I am talking about the proposal you just made in your testimony.

Mr. DIGENOVA. Well, then I must have done a bad job of communicating, Senator, because what the Department is willing to do is to permit all criminal laws and civil laws to go into effect without any action at all of Congress, except in the small area of the criminal law; but even those would go into effect unless the Attorney General in writing sent to the Speaker of the House and the President pro tempore of the Senate a letter certifying his disagreement with a bill or a part of it. Then, and only then, would there be required some affirmative action by the Congress. Otherwise if that certification were not sent, criminal law changes would go through.

Senator EAGLETON. That is the area to which I am referring.

Mr. DIGENOVA. Yes.

And I was saying earlier that in light of——

Senator EAGLETON. Define the area. If it is not the entire criminal code, then what portions thereof?

Mr. DIGENOVA. Well, it covers, theoretically, the entire area, but if we——

Senator EAGLETON. I am right. It covers the entire criminal code, and it says this, in practical words, and I will try to make it as nonlegalistic as I can. It says to the District of Columbia, with respect to any of their criminal laws, that if they see fit to want to change one of those laws the Attorney General will review the change first. My God, circumstances change. In the Missouri Legislature and, I dare say in the Maryland Legislature, a session doesn't go by without one or more amendments to the Missouri criminal code or the Maryland criminal code. But we will be saying, if we follow your recommendation and your proposal, to the District:

> It is going to be virtually impossible for you to change your code because if you change something, Attorney General X may, on an off moment, not particularly like that, so Attorney General X writes a letter to Congress and says, "I don't like what DC did on this particular criminal law and, therefore, I trigger into effect a two-House approval and a Presidential signature."

That is not an insuperable burden, but a considerable burden, and while that is in process, that new criminal statute doesn't go into effect, once the Attorney General certifies his disapproval; right?

Mr. DIGENOVA. [Nodded affirmatively.]

Senator EAGLETON. OK.

So, what I am saying, Mr. Chairman, is that I think this is a step backward on home rule. I don't think it can be viewed in any other light. I think the administration is grabbing onto *Chadha* and the dilemma it poses financially for the District and is saying,

> Ah, we have got a handy excuse now; we have got a handy vehicle to take some home rule authority back from the District because we have got the District where we want it; they are desperate to get some remedial legislation passed on *Chadha;* they will have to take what we offer because we, representing the President of the United States, have the right of veto, and we have got them in a corner; we are going to grab back the criminal jurisdiction that was provided to them in a sequential way in the 1974 Act with the 1978 cutoff.

Thus, I think for those reasons and others, that the administration's proposal is out of step with both the letter and, if not the

letter, most certainly the spirit of the home rule charter and the Home Rule Act.

Would you care to comment?

Mr. DIGENOVA. Senator, I think that the point is that—certainly I know that is not the motivation of the administration in this particular instance, No. 1.

No. 2, with regard to the resolution of approval which would be triggered by the Attorney General's certification to both Houses of Congress, as I indicated to the chairman, it seems that with the history of staying away from issues unless there was some eminent reason for intervention, in only two instances in the 800, that the record would indicate that the kind of restraint that has been exercised would certainly continue and that, indeed, in light of having all criminal and civil legislation go forth except in those 0.25-percent instances where the Attorney General might object, that I believe the problem that you are alluding to would not exist, although theoretically, because of the structure of the proposal, obviously, there would be an opportunity to intervene, and certainly you are correct in that.

We simply disagree on the projected likelihood of some sort of untoward intervention by an Attorney General who might not share certain beliefs about something.

Senator MATHIAS. Let me interrupt, if I may, because I agree with each of you in some part and I disagree with each you in some respect.

I think it may be innovative, but it is sometimes useful to think about it. Senator Eagleton has said that we are narrowing home rule. In a way he is right because the Supreme Court says the President has to be an actor in this process. It brings the President into the action. But in a way he is wrong because, under the old system, the Congress had 360-degree review of all acts of the city council. Everything the city council did was subject to congressional veto.

Now, under the proposal that Mr. diGenova has made, as I understand it, all the civil enactments of the city council would be freed of Presidential scrutiny. I think we have to be honest and candid about this. They are not going to be freed of congressional scrutiny because the Constitution——

Senator EAGLETON. On civil, it is going to take a two-House disapproval signed by the President. On civil.

Senator MATHIAS. That is correct.

But that is really inherent in the Constitution, because the Congress, without any special arrangements, can pass an act of Congress which repeals an enactment of the city council under any circumstances.

The special arrangement would only apply as far as the criminal side is concerned, and that is where the proposal to provide prior Presidential scrutiny would arise.

The question that I asked Mr. diGenova, and that he was unable to answer—and which I would hope that he would go back and discuss with the Department of Justice—is the extent to which that could be limited by adopting some sort of standards for defining when a Federal interest exists.

If, instead, you could narrow that to a very limited scope of cases, like 10 percent, then I think it makes some difference in practice. The District would then have 350 degrees of legislative discretion and only 10 percent, 10 degrees of area in which prior Presidential scrutiny would be applied.

Until we know the views of the Department of Justice on whether or not standards could be applied, I think it is difficult to determine just how tight this noose is. Clearly there has always been total review with the Congress.

There is one place where I would disagree with Mr. diGenova. He has pointed with some pride to the record of restraint, that only two city council enactments out of 800 have been repealed. But I would point out that that is not restraint on the part of the President; that is restraint on the part of the Congress. I think there have been times—in which I have not been in agreement with the action of the city council, but have felt in the spirit of home rule—and I know that Senator Eagleton observes the spirit of home rule very strongly—that it was the city council's decision that ought to prevail. I have refused to act even when I have been pressed to act on some of those matters.

I think it would be important to know whether there is any disposition to define the standards.

Senator EAGLETON. May I interject there, Mr. Chairman?

Senator MATHIAS. Surely.

Senator EAGLETON. I take it that what you are proposing is something like this. This is off the top of my head, but I think it tracks with what you are saying. This is a possibility.

Senator MATHIAS. I am not proposing anything. I am trying to understand.

Senator EAGLETON. You are trying to understand, and you are inquiring of the administration as to whether they will move in their position.

Take the standard criminal statutes that every State has on its books: homicide, robbery, burglary, rape, larceny, arson, et cetera. Every State has a form of statute or statutes in those subject matter areas that are traditionally State concerns.

Under your inquiry, those traditional statutes would be treated in what I will now call the new traditional way in the District, the two-House disapproval, signed by the President. But there are some unique statutes in the District, criminal in nature, that apply by reason of the fact that this is the Federal Capital. They might relate to treason, perhaps, or sabotage, perhaps, or assassination of the President, perhaps, or other unique statutes of——

Senator MATHIAS. The presence of embassies or the presence of international organizations, like the Organization of American States. Those all present unique Federal problems.

Senator EAGLETON. Those statutes that you will not find on the books of Maryland or Missouri, but you find on the books of the District of Columbia because it is the Nation's Capital.

Under your inquiry, you are inquiring whether the administration might differentiate between the commonplace, traditional, standard set of criminal statutes, in one group, and these unique statutes in another. Am I correct?

Senator MATHIAS. You are correct.

And whether the administration would agree to restraint in the normal kind of criminal law and to prior Presidential scrutiny only in the area where——

Senator EAGLETON. You know, there is some indirect precedent for what you are inquiring about. One of the principal reasons that the compromise in the Home Rule Act was brought about—that compromise where Congress held jurisdiction over criminal statutes for a total of 4 years—was because that happened to be right at the time of Watergate. We passed home rule in 1974; Watergate came to its zenith, or nader, depending on how you view it, in 1974, and the worry was, false worry, I suspect, but nonetheless, the worry was that by turning all the criminal statutes over to the District of Columbia, that somehow that might mess up the Watergate inquiry on those particular statutes that were being relied upon by the U.S. attorney's office in their investigations and prosecutions.

That wasn't the only reason the compromise was achieved, but that was one of them—don't rock the boat; we are in the middle of these cases, right in the middle of this investigation; my God, what happens if all of a sudden a bunch of statutes are changed?

Those were unique circumstances, to say the least, back then, but what you are inquiring about are unique statutes, applicable only to the District as the Nation's Capital.

Senator MATHIAS. I have just one further observation. I was interested that last week Judge Webster reported that the FBI statistics reflected a substantial drop in serious crime throughout the United States. The Washington Post called it the most significant decrease since the FBI began keeping statistics. The nationwide decrease was 7 percent, between 1982 and 1983, but in the District of Columbia the decrease was 12 percent.

I think all of the law enforcement in the District of Columbia can be very gratified by this. The metropolitan police can feel good about it; the Mayor can feel good about it; the U.S. attorney can feel good about it. I think you can all claim credit for it.

If it had been the other way, if it was a 12-percent increase, it would be blamed on you, whether you were responsible or not, so I think you might as well take credit whether you are responsible or not. It happened on your watch; that is the old Navy rule: If it happens on your watch, it is yours.

But the question that arises from this good news is that it would appear, in general, that the criminal laws are working in the District of Columbia. They are being successful. And, following Mark Twain's old rule, "If it ain't broke, don't fix it," why tamper with the balance of the criminal code at the very moment when it is reflecting the greatest success it has had in the memory of man?

Mr. United States?

Mr. DIGENOVA. Senator, we are not proposing that we tamper with the criminal code in the District of Columbia. We are dealing with——

Senator MATHIAS. I didn't say the code; I said the balance.

Mr. DIGENOVA. Well, the balance, if you are addressing the broader——

Senator MATHIAS. The balance of power that affects the code.

Mr. DIGENOVA. Oh, the balance of power in affecting the code—well, I think the Department's position is that the balance will be

kept the way it has always been, if either the compromise that I have enunciated today or the earlier proposal is kept. But I think that one thing is certain and it is that I will certainly go back with your question concerning a further enunciation of the compromise which I have discussed, I hope, intelligently with the committee this morning in an effort to get some clarification.

I, of course, can make no representations to the committee at this time about any further ability of the Department to give on that ground, but I will obviously go back and discuss it and see what can be done.

Senator MATHIAS. I think that would be a useful exercise. I appreciate Mr. Schott's willingness to go back and further discuss with the Treasury what the Treasury policy is. I am glad that Mayor Barry, despite the many demands on him, has stayed with us this morning and followed the dialog here. The chairman of the city council, Mr. Clarke, has stayed through the proceedings, and so they have heard what you have said. I think that we may be able to advance the cause as a result of these discussions.

Mr. DIGENOVA. Mr. Chairman, if I may just say, in light of what you said, I think, really, what we are saying is that we would agree, obviously, with the notion that if it ain't broke, don't fix it. We certainly feel that way about prosecution authority for the District of Columbia in terms of the U.S. attorney. But insofar as breaking something is concerned, just as it was beauty that killed the beast, it was *Chadha* that broke this machine, and that is what we are all trying to do now—find out a way, now that *Chadha* has broken this machine that we have all been operating under for some time, to figure out a way to fix it.

Senator MATHIAS. I think we are all in agreement on that, but we ought to fix it in a way that changes the balance of power the least.

Mr. DIGENOVA. We will do our best, Mr. Chairman.

[Mr. diGenova's prepared statement follows:]

PREPARED STATEMENT OF JOSEPH DIGENOVA

Mr. Chairman, I am honored to appear before your subcommittee in response to your invitation for the views of the Department of Justice on S. 1858, a bill to amend the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774 (1973), as amended, popularly known as the "Home Rule Act."

S. 1858 is a thoughtful attempt to correct a constitutional problem in the Home Rule Act—a problem that became even more apparent with the Supreme Court's decision in *Immigration and Naturalization Service* v. *Chadha*, No. 80-1832 (June 23, 1983).

As you know, *Chadha*, a case involving the Immigration and Nationality Act, struck down the so-called legislative veto device as violative of the Presentment Clause of Article I, section 7, of the Constitution and the principle of separation of powers. We have identified at least 126 separate statutes and 207 individual sections that contain unconstitutional legislative veto mechanisms. The Home Rule Act contains four such provisions:

(1) section 303(b) provides that "an amendment to the charter . . . shall take effect only if . . . both Houses of Congress adopt a concurrent resolution . . . approving such amendment";

(2) section 602(c)(1) provides that with respect to acts of the District of Columbia Council effective immediately due to emergency circumstances and acts proposing amendments to Title IV of the Home Rule Act "no such act shall take effect until the end of the 30-day period . . . and then only if during such 30-day

period both Houses of Congress do not adopt a concurrent resolution disapproving such act";

(3) section 602(c)(2) provides that any act of the D.C. Council affecting Title 22, 23, or 24 of the District of Columbia Code "shall take effect . . . only if . . . one House of Congress does not adopt a resolution disapproving such act"; and

(4) section 740(a) provides that either house may adopt a resolution terminating emergency presidential authority over the Metropolitan Police Department.

S. 1858 apparently agrees with our judgment that these provisions are constitutionally invalid, for it would amend the Act to require Congressional action disapproving D.C. Council enactments to take the form of legislation, passed by both houses and presented to the President for approval or disapproval.

S. 1858, and its counterpart, H.R. 3932, which passed the House on October 6 of last year, represent one of the first attempts by Congress to address by legislation *Chadha's* holding. Because the legislative veto mechanism is employed to balance conflicting Legislative and Executive Branch interests, there is no ready replacement. Rather, Congress and the Executive must examine each individual statute to determine how best to reallocate the varying interests that the individual legislative veto device in question sought to accommodate, consistent with *Chadha's* holding that legislation must be presented to the President for his signature. This is what must be done with the Home Rule Act.

Generally, we agree with the approach taken by S. 1858: by converting the legislative veto to, in effect, a joint resolution of disapproval, the Home Rule statute will be brought into compliance with the Constitution as required by *Chadha.*

It should be noted, however, that in the House Rule Act, Congress did not permit the D.C. Council to amend title 11 of the D.C. Code, the court structure title, and gave special treatment to D.C. Council amendments to three titles of the D.C. Code. Amendments to these titles, titles 22, 23, and 24, were subject to a one house veto, as opposed to the two house, or concurrent resolution veto, that applied to the other parts ofthe D.C. Code. These three titles, the criminal justice titles of the D.C. Code, were treated differently in 1973, and should be treated differently today, because of the special federal interest in the criminal justice system of our nation's capital. While we heartily endorse the use of a joint resolution of disapproval mechansim for the bulk of the amendments to the D.C. Code, we believe, for the following reasons, that amendments to titles 22, 23, and 24 should continue to receive separate treatment.

In the District of Columbia, prosecutions are brought in the name of the United States of America. The Department of Justice, through the United States Attorney for the District of Columbia, is the District's chief prosecutor. Similarly the Department of Justice through the United States Marshal for the District of Columbia is responsible for the service of process, courtroom security, the transportation of prisoners, and the return to the District of Columbia of defendants arrested in other jurisdictions and wanted for prosecution in the District. All persons convicted in the District of Columbia are committed to the custody of the Attorney General, who, through the Department's Bureau of Prisons, designates the place of confinement. A longstanding agreement with the District of Columbia Department of Corrections places most male prisoners in the Lorton facility.

The court of general jurisdiction in the District of Columbia, the Superior Court of the District of Columbia, is a federal court, and the judges of the Superior Court and the District of Columbia Court of Appeals are appointed by the President with the advice and consent of the Senate. A single jury system for grand and petit juries serves both the Superior Court and the United States District Court for the District of Columbia, and a grand jury of one court may return indictments to the other.

That Congress has determined that District of Columbia criminal justice system should be controlled by the federal government is not surprising when one considers the extent of the federal interest in the District. Approximately 41% of all land in the District is owned by the federal government. More than 200 buildings are owned or leased by the federal government. Over 445,000 federal employees work in the Washington Metropolitan area. Countless Americans visit their capital city each year for purposes ranging from conducting business with the federal government to touring the capital. The presence of a substantial permanent diplomatic community and innumerable foreign visitors underscore the federal interest in the enactment, enforcement and interpretation of the criminal laws governing the District of Columbia.

We believe that D.C. Council amendments to the criminal justice titles of the D.C. Code should continue to receive the special scrutiny that their importance to the federal government requires. Last fall the Department suggested that the primary authority of the Congress and the President in District of Columbia criminal justice

matters could best be preserved by subjecting D.C. Council amendments to the criminal justice titles to a joint resolution of approval, and this continues to be our position. Requiring enactment of a joint resolution of approval in order for an amendment to those titles to take effect would be fully consistent with the original Congressional intent to reserve for Congress a greater role with respect to amending these titles. In informal discussions with representatives of the District Government we have explored other alternatives.

I should emphasize, however, that even under our resolution of approval proposal, the District Council would have far more independence from the Congress and the President than it has under current law. Thus, D.C. Council enactments to those provisions of the D.C. Code, other than the criminal justice provisions, the bulk of the D.C. Code, that before *Chadha* would be subject to a concurrent resolution veto, would now be subject only to a joint resolution veto, which requires the approval of the President. It would, in other words, take a statute to overturn a Council amendment to the non-criminal justice provisions—a Congressional authority that even the Council would not quarrel with and a substantial diminution of federal authority over the greatest part of the D.C. Code.

As you know, two recent decisions of the Superior Court of the District of Columbia, *United States* v. *Langley*, Cr. No. F-3666-82, and *United States* v. *McIntosh*, Cr. No. F-4892-83, concluded that the *Chadha* decision, generally striking down legislative vetoes, did not apply to the legislative authority exercised by Congress over the District of Columbia. In two respects, we believe that these decisions were incorrectly reasoned and will therefore seek to have them modified on appeal.

First, both decisions incorrectly contend that the grant of plenary congressional powers over the District in Art. I, § 8, cl. 17 of the Constitution constitutes a *local* legislative power exercised by Congress over the District of Columbia in a manner distinct from its broader *national* legislative power, only the latter of which is subject to the requirements of bicameralism and presentment at issue in *Chadha*. It is our position that such a distinction between Congress's so-called "national" and "local" legislative powers is nowhere found in the Constitution.

Second, both decisions incorrectly assert that Congress need not follow the legislative procedures of bicameralism and presentment required by Art. I, §§ 1 and 7 of the Constitution when it exercises legislative power with respect to the District. Both decisions confuse *what* subjects Congress may legislate about, with *how* Congress must legislate with respect to *all* subjects. As the Supreme Court made clear in *Chadha*, although Congress may exercise its legislative power with respect to many subjects, "the prescription for legislative action in Art. I, §§ 1, 7 represents the Framers' decision that the legislative power of the federal government be exercised in accord with a *single*, finely wrought and exhaustively considered, *procedure*. . . ." 103 S.Ct. at 2784 (emphasis added). Far from exempting legislation respecting the District from this single legislative procedure, Art. I, § 8, cl. 17 authorizes Congress only "[t]o exercise exclusive *Legislation* in all Cases whatsoever" (emphasis added) with respect to the District. Thus, *Chadha*'s plain language requires that Congress exercise its exclusive legislative powers with respect to the District "in conformity with the express procedures of the Constitution's prescription for legislative action" passage by a majority of both Houses and presentment to the President." 103 S.Ct. at 2787 (emphasis added).

While we oppose the enactment of S. 1858, unless amended as suggested above, we will continue to work with representatives of the District of Columbia government to propose to Congress an amendment to the Home Rule Act that will satisfy all of our concerns.

Senator MATHIAS. On that note, unless Senator Eagleton has something further, the committee will stand in recess subject to the call of the Chair.

The record will remain open for 1 week for further submissions.

[Whereupon, at 12:05 p.m., the committee stood in recess, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

98TH CONGRESS
1ST SESSION

S. 1858

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 19), 1983

Mr. MATHIAS (for himself and Mr. EAGLETON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 303(b) of the District of Columbia Self-Government and Governmental Reorganization Act is amended to read as follows:

"(b) An amendment to the charter ratified by the registered qualified electors shall take effect upon the expiration of the thirty-five-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment

was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless during such thirty-five-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in section 604 of this Act, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such thirty-five-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such thirty-five-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.".

(b)(1) The second sentence of section 412(a) of such Act is amended to read as follows: "Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes.".

(2) The last sentence of section 412(a) of such Act is amended to read as follows: "Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove, when specifically authorized by an act, proposed actions designed to implement an act of the Council.".

(c) The second sentence of section 602(c)(1) of such Act is amended to read as follows: "Except as provided in para-

graph (2), such act shall take effect upon the expiration of the thirty-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than three days, or an adjournment of more than three days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless during such thirty-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such thirty-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such thirty-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

(d) The third sentence of section 602(c)(1) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(e) The first sentence of section 602(c)(2) of such Act is amended by deleting "only if during such thirty-day period one House of Congress does not adopt a resolution disapproving such act." and inserting in lieu thereof "unless, during such thirty-day period, there has been enacted into

law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such thirty-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such thirty-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law.".

(f) The second sentence of section 602(c)(2) is amended to read as follows: "The provisions of section 604, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.".

(g) Section 604(b) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(h) Subsections (b) and (c) of section 740 of such Act are amended by deleting in each such subsection the words "resolution by either the Senate or the House of Representatives" and inserting in lieu thereof "joint resolution by the Congress".

(i) Section 740(d) of such Act is amended by deleting "concurrent" and inserting in lieu thereof "joint".

(j) The amendments made by this section shall not be applicable with respect to any law, which was passed by the Council of the District of Columbia prior to the date of the enactment of this Act, and such laws are hereby deemed

valid, in accordance with the provisions thereof, notwithstanding such amendments.

SEC. 2. Part F of title VII of such Act is amended by adding at the end thereof the following new section:

"SEVERABILITY

"SEC. 762. If any particular provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.".

SEC. 3. Section 164(a)(3) of the District of Columbia Retirement Reform Act is repealed.

PREPARED STATEMENT OF JAMES W. DYKE, JR. AND MARTIN F. ROBINSON, SIDLEY & AUSTIN, AND CLINTON CHAPMAN, CHAPMAN, NORWIND & VAUGTHERS (CO-BOND COUNSEL FOR THE DISTRICT OF COLUMBIA)

Good Morning Senators. My name is James Dyke. I am a partner in the law firm of Sidley & Austin. I am accompanied by my partner, Martin F. Robinson, and by Clinton Chapman, senior partner in the firm of Chapman, Norwind & Vaugthers. Our firms have the privilege of serving as co-bond counsel to the District of Columbia.

Today's testimony confirms our advice as co-bond counsel to the District with regard to H.R. 3932 and S. 1858 which are technical amendment bills pertaining to the District's Home Rule Act.

We previously advised the District that we believe recent decisions of the United States Supreme Court have caused considerable doubt as to the constitutionality of the congressional veto provisions contained in the Home Rule Act. While it is our view that if the congressional veto provisions in the Home Rule Act were held invalid they also would be found severable from the remainder of the Home Rule Act, and even though there have been several local court decisions holding that the Supreme Court's *Chadha* decision does not apply to the District of Columbia, we believe that an ultimate judicial determination on both the application of *Chadha* to the District and the severability issue cannot be predicted with sufficient certainty to enable us to render an unqualified opinion on the validity of the District's contractual debt obligation in a bond or note issuance.

As bond counsel, we had the opportunity to review both H.R. 3932 and S. 1858 prior to their introduction. In our opinion both legislative proposals would eliminate the legal uncertainty caused by the recent Supreme Court decisions on congressional veto provisions. Enactment of this legislation in the form introduced in both the Senate and the House and in the form passed by the House would enable us to deliver unqualified opinions with respect to the validity to the District's debt obligations.

In addition, our firms are of the opinion that should Congress not be able to reach an immediate agreement on the mechanism for congressional review of District of Columbia City Council action, there is still available a legislative method to resolve the narrow issue of the validity of District Government action, particularly as it relates to the District's ability to continue its financial operations. Unqualified bond opinions could be rendered if Congress enacted legislation which ratified the Home Rule Act and any laws of the District of Columbia in effect on the date of enactment of such legislation. The legislation should also declare the Home Rule Act and those existing local laws to be in effect notwithstanding any judicial determination concerning the constitutional validity of any provisions of the Home Rule Act which involve adoption of disapproval resolutions by one or both Houses of the Congress. Such legislation should also state that the validity and effect of any actions taken in the past and any actions undertaken in the future by the District and its officials would not be affected by any such judicial determination.

Legislation of this kind would in effect sever the legislative veto provisions from the remainder of the Home Rule Act and allow bond counsel to render unqualified legal opinions. Congress would be declaring that the Home Rule Act and existing laws of the District are in force even if a court were to find the legislative veto provisions invalid. This solution would still leave open for congressional determination the mechanism to be used in the future for congressional review of legislative action of the District.

For the committee's consideration, we submit with our statement today draft legislative language which reflects this proposal.

We appreciate the opportunity to testify before this committee. We close by urging that Congress move expeditiously to enact legislation which will resolve the uncertainty over the validity of past and future District Government actions and allow the District to enter the bond market on an equal footing with other municipal and State jurisdictions.

Thank you.

DRAFT LEGISLATION

SECTION 1. The District of Columbia Self-Government and Governmental Reorganization Act and all laws of the District of Columbia in effect on the date of enactment of this Act are hereby ratified and declared to be in effect notwithstanding any judicial determination concerning the constitutional validity of any provisions of the District of Columbia Self-Government and Governmental Reorganization Act

which involve adoption of resolutions by one or both Houses of Congress disapproving acts of the Council of the District of Columbia.

SEC. 2. The validity and effect of all actions taken in the past and any activities undertaken in the future by any officer, employee, agent, agency, board, commission, authority or council of the District of Columbia or by any officer, employee, agent or member of any of the foregoing pursuant to any law of the District of Columbia in effect on the date of enactment of this act shall not be affected by any judicial determination concerning the constitutional validity of any provisions of the District of Columbia Self-Government and Governmental Reorganization Act which involve the adoption of resolutions by one or both Houses of Congress disapproving acts of the Council of the District of Columbia.

PREPARED STATEMENT OF THOMAS M. ZUNIGA, EXECUTIVE DIRECTOR OF D.C. HOUSING FINANCE AGENCY

Thank you Mr. Chairman for the opportunity to appear before you today. Ny name is Thomas M. Zuniga, I am the Executive Director of the D.C. Housing Finance Agency.

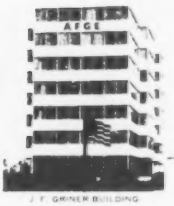
The HFA was created by the council of DC to generate funds from private and public sources to increase the supply and lower the cost of funds available to finance housing thereby alleviating a shortage of adequate housing for low- and moderate-income families in the District. The agency is therefore primarily concerned with increasing the supply of housing by making available below market interest rates with the desired result of reducing housing costs of an affordable level.

Since its creation four years ago, the agency has financed approximately a thousand new units of housing. Two-thirds of these units are in southeast DC—considered the poorest area of the District.

With the curtailment of Federal housing funds over the past few years, the District of Columbia has had to look to its own independent facilities to make housing available. The HFA is the city's only tool for generating money from the private market to meet the critical shortage of housing for low- and moderate-income families.

Today, because of *Chadha*, the District is unable to take advantage of certain immediately available opportunities to increase the supply of housing. If *Chadha* were resolved, the agency could immediately make available $30 million to finance the purchase of home by 450 first time homebuyers. The agency has a pipeline of 1,300 units of multifamily housing (infeasible under conventional loan rates) but immediately fundable by the HFA. Developers who are interested in investing in the District are prevented from doing so because of the uncertainty caused by *Chadha*. These are District-based developers and developers from neighboring States.

The agency has ambitious plans to responsibly fulfill its legislative mandate—the issuance of mortgage revenue bonds to finance housing in the District. We have an excellent team comprised of board members, bond counsel, and staff, but we find ourselves at a standstill and unable to do anything to assist citizens of the District.



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL-CIO

KENNETH T. BLAYLOCK, NATIONAL PRESIDENT · JOHN N. STURDIVANT, EXECUTIVE VICE PRESIDENT · NICHOLAS J. NOLAN, NATIONAL SEC.-TREAS.

1325 MASSACHUSETTS AVE., N.W. · WASHINGTON, D. C. 20005
Telephone: (202) 737-8700

IN REPLY PLEASE REFER TO:
6f/District of Columbia

April 24, 1984

The Honorable Charles McC. Mathias
Chairman, Subcommittee on Governmental
Efficiency and the District of
Columbia
Committee on Governmental Affairs
United States Senate
442 Hart Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

The American Federation of Government Employees has been monitoring the legislation in the House and Senate designed to comply with the Supreme Court decision on legislative vetoes. H.R. 3932, which passed the House on October 4, 1983, and your bill S. 1858, both provide relief to the impending financial crisis confronting the District of Columbia's ability to raise revenue.

We are concerned that unless the impasse that the Congress and the Administration are locked into is resolved, the over 10,000 people we represent who are employed by the District of Columbia may find themselves without a pay check due to the inability of the District government to secure funds.

As strong supporters of home rule and self-determination, we are equally concerned that the legislation ending this impasse not roll back any rights currently enjoyed by the citizens of the District of Columbia.

The AFGE strongly supports your bill, S. 1858 and urges you to do everything you can to settle this impasse in a timely manner.

Sincerely,

Kenneth T. Blaylock
National President

AFSCME

American Federation of State, County and Municipal Employees
1625 L Street, N.W., Washington, D.C. 20036
Telephone (202) 429-1000
Telex 89-2376

April 25, 1984

Gerald W. McEntee
President

William Lucy
Secretary Treasurer

Ronald C. Alexander
Columbus, Ohio

Bob Anderson
Jefferson City, Mo.

Dominic J. Badolato
Berlin, Conn.

Rev. Albert B. Blatz
St. Peter, Minn.

Joseph Bolt
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Joseph M. Bonavita
Boston, Mass.

Robert A. Brindza
Columbus, Ohio

Ernest B. Crofoot
Baltimore, Md.

Steve Culen
Chicago, Ill.

Lawrence V. DeCresce
Columbus, Ohio

Albert A. Diop
New York, N.Y.

Thomas G. Gerber, Sr.
Eau Claire, Wisc.

James Glass
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Victor Gotbaum
New York, N.Y.

Blondie P. Jordan
Orlando, Fla.

Edward J. Keller
Harrisburg, Pa.

George Masten
Olympia, Wash.

Joseph E. McDermott
Albany, N.Y.

Georgia M. McGhee
Grand Rapids, Mich.

William L. McGowan
Albany, N.Y.

Jack Merkel
Trenton, N.J.

Richard P. Morton
New York, N.Y.

Russell K. Okata
Honolulu, Hawaii

George E. Popyack
Redwood City, Calif.

T. J. Ray
Baton Rouge, La.

Earl Stout
Philadelphia, Pa.

Maynard White
Houston, Texas

The Honorable Charles McC. Mathias
Chairman
Subcommittee on Governmental Efficiency
and the District of Columbia
442 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Mathias:

The American Federation of State, County and Municipal Employees (AFSCME), a labor union representing more than one million members nationwide including over 10,000 in the District of Columbia, urges you to take prompt action in correcting problems faced by the District due to the Supreme Court decision in Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983) in which the court struck down as unconstitutional the one-house legislative veto.

Because the D. C. Self Government and Governmental Reorganization Act (the Home Rule Charter) contains three congressional veto provisions, questions have been raised concerning the applicability of the decision to the District. The debate has a severe financial and legal impact on the City. Specifically, the City's Bond Counsel has declined to issue an unqualified opinion on various bonds thereby precluding the City from going into the bond market. Additionally, litigants are using the decision as an argument in attacks on city laws enacted since Home Rule.

AFSCME believes that H.R. 3932 (which passed the House on October 4th) and S. 1858, which bring each of the veto provisions in the Home Rule Act into conformity with the Chadha decision by altering the form of congressional action to that of a joint resolution of disapproval, represent a just solution to the problem. These bills provide relief to the District without diluting Home Rule.

As a supporter of home rule and self-determination, AFSCME urges you to support S. 1858. Additionally, I would appreciate your inserting this letter in the official hearing record.

Sincerely,

William B. Welsh
Director of Legislation

WBW:mlm

cc: Hon. Warren Rudman
Hon. Thad Cochran
Hon. Thomas Eagleton
Hon. Lawton Chiles

The Greater Washington Board of Trade

Linking Business and Community in The District of Columbia, Northern Virginia and Suburban Maryland

'84 APR 24 P5:10

President
John T. Hazel, Jr.
Senior Partner
Hazel, Beckhorn & Hanes

April 23, 1984

The Honorable Charles McC Mathias, Jr.
376 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

On behalf of The Greater Washington Board of Trade, I would like to express to you our long standing support of the District of Columbia Home Rule Act and our concern over the lack of resolution of the problems caused with regard to Home Rule by the Supreme Court decision in the Immigration and Naturalization Service vs. Chadha case. The Greater Washington Board of Trade, as you probably know, is a private, non-profit business association with approximately 1300 corporations and 5000 individuals in its membership. As an organization, we have long supported Home Rule for the District of Columbia. Therefore, we commend your efforts to work for an early resolution of this issue to protect the gains made in the last decade allowing the citizens of the District to make decisions through locally elected representatives. The gains of Home Rule for which we have all worked so hard must not be sacrificed because of this decision. The obstacles presented by this decision are difficult but certainly not insurmountable.

Although the overall issue of Home Rule for the District is our major concern we are also very concerned about the suffocating effect on economic development due to the government's inability to issue revenue bonds. The Board of Trade is aware of at least ten projects involving more than $116 million that have been put "on hold" until some resolution of the controversy over Home Rule is reached. Not only are major development projects being delayed but several have been cancelled.

Board of Trade Building • 1129 20th Street, N.W., Washington, D.C. 20036 • 202-857-5900

The District will continue to be unable to participate in the Industrial Development Bond market as long as this cloud hangs over the Home Rule Act. We fear that the city may lose additional projects because it will not be able to compete with surrounding jurisdictions which are able to issue bonds. Although we do not support any specific alternative approach to resolution we are four square behind an expeditious action.

The Board of Trade greatly appreciates your efforts in trying to resolve the Home Rule problem expediently. The longer this problem continues the more adversely the District of Columbia and her citizens will be affected.

Please be assured that the Board of Trade and its members are willing to help if needed.

Sincerely,

JOHN "TIL" HAZEL, JR.

cc: Mr. Joseph DiGenova, U.S. Attorney
Mayor Marion Barry
Council Chairman Clarke

Communications Workers of America
AFL-CIO

1015 20th Street, N.W., Suite 300
Washington, D.C. 20036
202 785-8794 - 331-9802

April 24, 1984

Senator Charles Mathias, Chairman
Subcommittee on Governmental Efficiency and the
District of Columbia
United States Senate
Washington, D. C. 20515

Dear Mr. Chairman:

The Communications Workers of America, District 2 urges you to end the current impasse and to enact remedial legislation to remove the Chadha cloud from the District of Columbia home rule charter.

CWA greatly appreciates the strong leadership you have displayed in the past in assisting the District in its struggle for self-determination. We are calling upon you again to insure that the growth of home rule in the District is furthered and not reversed as a result of the Chadha decision.

CWA believes the Department of Justice's interest in becoming "involved" in the home rule process will be at the expense of the citizen's political freedom. CWA prefers the Senate approach, as embodied in S.1858. We believe your bill retains a roll for Congress while safeguarding the fundamental principles of home rule.

We ask your assistance to resolve this matter as soon as possible.

Thank you very much.

Sincerely,

George R. Strick
Vice President

George R. Strick
Vice President
District 2

Communications Workers of America, Local 2336

An AFL-CIO Affiliate
Peter G. Catucci, President

746 Ninth Street, Washington, D.C. 20001
Phone (202) 737-3566

May 2, 1984

Senator Charles McC. Mathias
Subcommittee on Governmental Efficiency
and the District of Columbia
SH442 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

The Communications Workers of America, Local 2336 calls on you to help dissolve the current stalemate and move on remedial legislation to remove Chadha from the District of Columbia charter.

The 4,000 members of the Local reside mostly in the District of Columbia and Maryland. They have enjoyed your champion leadership in the strive for self-determination, and it has been appreciated. The Chadha decision is a decisive turn away from growth and demand for home rule. You and your colleagues have served the approach adequately in S:1858.

We seek your assistance and we thank you very much.

Sincerely,

Peter G. Catucci
President

PGC/kmp

Consortium of Universities of the Washington Metropolitan Area
1717 Massachusetts Avenue, N.W., Suite 401
Washington, D.C. 20036
(202) 265-1313

April 24, 1984

The Honorable Charles McC. Mathias
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

I know the great help that you have been to the District of Columbia in the past and to its university community in particular. I am writing to you now in connection with the Hearings that you have scheduled on April 25 concerning the problems the District of Columbia is having with regard to congressional approval of its criminal code in view of the position that the U.S. Department of Justice has taken.

I should like to say first that it is imperative for the higher education community of Washington that the current problem, with regard to congressional approval of D.C. legislation, be resolved. The cloud that the present situation creates has overshadowed attempts on the part of two of the university members of the Consortium, as well as the Consortium itself to enter the tax exempt bond market for a variety of purposes. With regard to the two universities (Georgetown and George Washington) there is need for monies for facilities construction. With regard to the Consortium at large, we have been working for almost two years on a bond issue to generate monies to be used for student loans that would supplement existing loan sources for our students in the City. As you know, higher education in Washington is one of its major industries. It is estimated that this year the economic contribution to the Washington metropolitan area from the presence of the D.C. colleges and university members of the Consortium amounts to almost $2,000,000,000. The university community employes almost 8% of the entire work force of the District of Columbia and therefore the health of this industry is absolutely imperative. To maintain that health, it is absolutely necessary that the Consortium be able to enter the tax exempt bond market to provide monies for low interest student loans to be able to continue to attract students at our institutions and therefore contribute to the local economy. The loan program we have in mind has no federal subsidy and

The American University
The Catholic University of America
The George Washington University
Georgetown University
Howard University
University of the District of Columbia
Gallaudet College
Mount Vernon College
Trinity College

no federal guarantee. It is the obligation of the universities themselves and is a manner of self help that we have agreed to engage in in view of the fact that current sources of student financial aid are not sufficient to meet student financial need.

Moreover, it appears to us that the U.S. Department of Justice "doth complain too much." With regard to criminal legislation, in comparison with my hometown of Albany, New York, I have found that the City Council of the District of Columbia has been not only responsible but even conservative. I doubt that more deliberation is expended anywhere on any local legislative change than occurs in the legislative process of the District and our own attitude is that the U.S. Department of Justice should be able to take comfort in the fact that not only the civil but also the criminal code is subject to the kind of scrutiny that the District Council and the Administration exercise on every piece of legislation introduced. From my point of view, I see no difference in the manner of congressional approval of D.C. legislation as between the civil and criminal codes. It would appear to me that the solution to the problem should be resolved in favor of the District and against the position that the U.S. Department of Justice has assumed.

In addition to the above, the issue before Congress at the moment extends to the very nature of home rule. It has been the intent of Congress to grant to the District a modified home rule authority. It is my position that there is nothing that has occurred to warrant the erosion of home rule for the District of Columbia. I would ask you to persuade your Committee to have the entire home rule question resolved in favor of the District.

I should like to reemphasize the urgency of the resolution of the present problem from the point of view of the Consortium. It will be imperative for us to enter the bond market to provide monies for student loans, without which we have great fears for the continued health of what has become a truly great academic enterprise and a very important economic contribution to our area. I know that we can count on your assistance in resolving these matters satisfactorily to us as you have so many times in the past.

Thank you for all your assistance in this and in so many other matters.

With every best wish, I am

Sincerely yours,

Reverend John P. Whalen
Executive Director

cc: Ms. Pauline Schneider
Deputy Mayor for Intergovernmental Relations

DISTRICT OF COLUMBIA BANKERS ASSOCIATION

SUITE #240 – 1750 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 783-4555

April 24, 1984

Senator Charles McC. Mathias
Chairman
Subcommittee on Governmental Efficiency
and The District of Columbia
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

The District of Columbia Bankers Association urges you to end the impasse and to enact remedial legislation removing the CHADHA cloud from the Home Rule Act.

As a strong supporter of the District's quest for self-government and a firm believer in the republican concept of Home Rule, the District has been blessed to have you guide it through the first ten years of Home Rule. You have shared our struggle from passage of the Self-Government Act, through the infancy of the young government, to the blossoming of a mature Body Politic. Now by virtue of your position and stature you are called upon to be the arbiter of a peculiar dilemma--whether to further the growth of Home Rule or to reverse the course.

The Department of Justice argues the need to become "involved," at the expense of the local citizens' political freedom. The Bankers Association prefers the Senate approach, as embodied in S.1858. We believe your bill sustains a role for Congress and safeguards the fundamental principles of Home Rule.

A quick solution to this matter is important for the District and the Association urges your help and quick action.

Sincerely,

Maurice J. Cullinane

DCBA CIIC

DISTRICT OF COLUMBIA BUILDERS ASSOCIATION/COMMERCIAL INDUSTRIAL INSTITUTIONAL COUNCIL OF WASHINGTON, D.C.

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April 30, 1984

The Honorable Charles McC. Mathias, Jr.
Chairman
Governmental Affairs Subcommittee on
Governmental Efficiency and the
District of Columbia
United States Senate
Washington, D.C.

Dear Senator Mathias:

We are writing to express our strong support of S-1858 and to urge your committee to report this bill out favorably at the earliest possible moment and to then assist in its passage.

Our association's membership includes numerous residents of Maryland, including the undersigned, and Virginia, but our common bond is the construction and development field in the District of Columbia. The District of Columbia labored hard for many years to obtain a measure of home rule, and, since its advent, has worked diligently to improve and expand upon that process. Our government has been stabilizing itself, and it is both frustrating and inequitable, at best, for the citizens and Government of the District of Columbia to have to bear the affront of a threatened reduction in its already limited self-government status.

The existence of the Chadha decision serves only to compound the District of Columbia's predicament and provides significant economic leverage over the City that is itself harmful to the City's economic health and growth. Important commercial developments may be delayed or impaired by the unavailability of IRB

5100 Wisconsin Avenue, N.W. Suite 301 Washington, D.C. 20016 202/966-8665

financing, adversely impacting tax revenues, employment, and neighborhood development. Very significant projects requiring tax-exempt bond financing through the City's Housing Finance Agency will certainly be delayed, and others are likely to be lost altogether, thereby depriving residents of needed housing for both rental and homeownership purposes. In short, the inability of bond counsel to give an unqualified opinion as to the District of Columbia's authority to issue tax-exempt bonds because of the Chadha decision may be perilous for many businesses, financial institutions, non-profit organizations, tenants, and homebuyers. The situation is further aggravated by the City's inability to have access to the bond market for general obligation bonds and the adverse effects on even the daily operations of the District Government of an inability to refinance its debt.

We therefore urge you to have the Committee adopt a position on this bill as quickly as possible that will permit the District of Columbia to plan its fiscal affairs for this year and to promote the production of needed housing and commercial facilities.

Thank you for your consideration.

Sincerely yours,

Philip R. Miller

cc: Honorable Marion Barry, Jr.
Ms. Pauline Schneider
Abraham J. Greenstein, Esq.

FCC

OFFICERS

April 24, 1984

The Honorable Charles McC. Mathias
Chairman
Senate Subcommittee on Governmental
Efficiency and the District of
Columbia
358 Russell Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

I understand that your Committee is holding hearings this week on the Chadha decision and its impact on the District of Columbia.

The Federal City Council is deeply concerned by the current uncertainty over the District government's legal status. The City's ability to enter the bond market, its criminal justice programs, and a variety of other services are in jeopardy while this uncertainty exists.

From our review of the various positions advanced by local and Federal officials, we believe it is in the best interest of everyone for Congress to clarify the District's status at the earliest possible time. We believe S-1858 would accomplish what the local government needs and would adequately protect the Federal interest in city affairs.

Sincerely,

Harry McPherson

Harry McPherson
President

by Ken Sparks

For Community Development in the Nation's Capital

FEDERAL CITY COUNCIL
1156 15th Street, N. W.
Washington, D. C. 223-4560

OFFICERS

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2932 MACOMB ST. N.W. 20008
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337 1844

Federation of Citizens Associations of the District of Columbia

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April 26, 1984

Hon. Charles McC. Mathias, Chairman
Senate Subcommittee on Governmental Efficiency
and the District of Columbia
Hart Senate Office Building - Room H-442
Washington, D. C. 20510

Re: S. 1858 Home Rule Act Amendments, D.C.

Dear Senator Mathias:

The hearing held yesterday, April 25, on D. C. Home Rule and the "legislative veto" question posed by the the Chadha decision of the U. S. Supreme Court appears to show that the Federal and D. C. governments are not any closer to an agreement than they were on September 28, 1983 at which our Federation's president Stephen A. Koczak and I testified.

The Washington Post (April 26, 1984) reported that both you and Senator Thomas Eagleton feel that the plan offered by the U.S. Department of Justice would give the Attorney General too much control over D.C. criminal laws.

In an effort to be helpful to all parties I am enclosing two items and ask that they be included in your Committee's hearing record on S. 1858, the D.C. Home Rule Act amendments, they are:

1. The Opinion of Chief Judge H. Carl Moultrie, D.C. Superior Court, in United States of America v. Wade A. Langley, commenting on the Chadha case.

2. The Pro Se motion submitted to the D.C. Superior Court by Mr. Koczak as an Amicus Curiae brief to clarify the relevance of the alleged "legislative veto" of D.C. Council actions by the Congress under the Home Rule Act. Mr. Koczak also comments on the Chadha case.

Please note that Judge Moultrie concludes his opinion by stating (see page 8) that: "The one-house veto of the Sexual Assault Reform Act was not unconstitutional", and this aspect of his Opinion has been generally ignored and overlooked by both the Federal and D. C. government officials. I am sure you will note his Opinion most carefully. It is clear Judge Moultrie considers the D.C. Home Rule Act fully constitutional, and does not need nor should it have such amendments as proposed in S. 1858.

Respectfully submitted,

J. George Frain

J. George Frain
Vice President, Federation of Citizens
Associations of the District of Columbia

1789 Lanier Place, N.W.
Washington, D. C. 20009

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	
	:	
V.	:	CRIMINAL CASE NO. F3666-82
	:	
WADE A LANGLEY	:	

AMENDED MEMORANDUM OPINION

The Memorandum Opinion issued March 28, 1984, is herewith amended to reflect a certificate of service and to clarify quotations and citations.

CHIEF JUDGE H. CARL MOULTRIE I

March 30, 1984

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES	)	
V.	)	CRIMINAL NO. F-3666-82
WADE A. LANGLEY	)	

AMENDED MEMORANDUM OPINION

This matter comes before the court upon defendant's motion, through counsel, to arrest judgment, and the government's opposition thereto. Defendant challenges the validity of the statutes under which he was indicted, tried, and convicted.

On September 7, 1983, defendant was indicted and charged with two counts of rape under D.C. Code § 22-2801, one count of assault with intent to commit rape under D.C. Code §§ 22-2801, 22-503, and two counts of assault with intent to commit sodomy under D.C. Code §§ 22-3502, 22-503. On September 20, 1983, defendant was arraigned, and on February 9, 1984, following a jury trial, defendant was convicted of two counts of rape and one count of assault with intent to commit sodomy.

Defendant now argues that the statutes under which he was convicted were repealed by an act of the District of Columbia City Council on July 14, 1981.[1]

On July 14, 1981, the City Council passed by unanimous vote the District of Columbia Sexual Assault Reform Act of 1981. Bill No. 4-122. On July 21, 1981, this Bill was signed by the Mayor, and the Sexual Assault Reform Act, D.C. Act 4-69, was published in the D.C. Register for July 13, 1981, 23 D.C.R. 3409, with the codification of the Act noted in the margin.

---

1 Defendant made a similar oral challenge to the indictment at the close of his case. That motion was denied by the court.

The Act as passed by the Council and signed by the Mayor repealed the rape and sodomy provisions of D.C. Code §§ 22-2801, 22-3502. In place of the repealed provisions, the Act provided, in pertinent part, as follows:

> Sec. 3. Sexual Assault in the First Degree. Whoever compels a person to participate in or submit to a sexual act:
> (a) by actual physical force;
> (b) by threatening or placing the victim in reasonable fear that any person will be subjected to death, kidnapping, or bodily injury...
> commits an offense and upon conviction shall be imprisoned for a term not exceeding twenty (20) years.
>
> Sec. 2. Definitions.
> (7) "Sexual act" means conduct consisting of contact: (a) between the penis and the vulva, anus, or mouth ... .

Under the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (hereinafter Self-Government Act), specifically D.C. Code § 1-233(c)(2), acts of the City Council with respect to any act codified in Title 22, 23, or 24, shall take effect at the end of a thirty-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such thirty-day period one House of Congress does not adopt a resolution disapproving such act. On September 9, 1981, consistent with its authority under the Self-Government Act, the United States House of Representatives voted to veto the Sexual Assault Reform Act. H.R. Res. 208, 97th Cong., 1st sess. (1981). No action was taken by the Senate, and the resolution was not presented to the President.

On June 23, 1983, in INS v. Chadha, __ U.S. ___, 103 S. Ct. 2764 (1983), the Supreme Court held unconstitutional a provision of the Immigration and Nationality Act which authorized a one-house veto of the Attorney General's decision to suspend deportation of certain aliens. The Court found that such action was legislative in nature and

subject to the constitutional requirements of passage by both Houses of Congress and presentation to the President. Id. at ___, 103 S. Ct. at 2786-87.

In the instant case, defendant argues that the single-house veto of the Sexual Assault Reform Act was unconstitutional, and therefore the statutes under which he was indicted and convicted were effectively repealed by the City Council. This Court finds, however, that the Supreme Court's decision in INS v. Chadha does not apply to the District of Columbia Self-Government Act and that the one-house veto of the Sexual Assault Reform Act was constitutional.

The Supreme Court's decision in Chadha was based on the inconsistency between the legislative veto provision of the Immigration and Nationality Act and the principles of Separation of Powers which are reflected in Art. I and throughout the Constitution. Art. I provides:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." Art. I, § 1.
>
> "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; ..." Art. I, § 7, cl. 2.
>
> "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill." Art. I, § 7, cl. 3.

Lawmaking is a power to be shared by both Houses and the President, and as the Supreme Court noted in Chadha, "legislation should not be enacted unless it has been carefully and fully considered by the Nation's elected officials." Id. at ___, 103 S.Ct. at 2783.

While the bicameral requirement and the Presentment Clauses were intended to provide checks on each branch of government, not every action taken by either House is subject to the requirements of Art. I. In Chadha, the court specifically listed the four exceptions, provided for in the Constitution, where one House may act alone with the unreviewable force of law:

> (a) The House of Representatives alone was given the power to initiate impeachments. Art. I, § 2, cl. 6.
> (b) The Senate alone was given the power to conduct trial following impeachment on charges initiated by the House and to convict following trial. Art. I, § 3, cl. 5;
> (c) The Senate alone was given final unreviewable power to approve or to disapprove presidential apppointments. Art. II, §2, cl. 2;
> (d) The Senate alone was given unreviewable power to ratify treaties negotiated by the President. Art. II, § 2, cl. 2.

Id. at ___, 103 S.Ct. at 2786. This list is not exhaustive; these are merely the exceptions specifically provided for in the Constitution. To read Chadha as invalidating every statute in which Congress has reserved a legislative veto would "sound the death knell for nearly 200 other statutory provisions." See id. at ___, 103 S.Ct. at 2792 (White, J., dissenting). The Supreme Court simply could not have intended to invalidate legislative veto provisions which do not conflict with the purposes of the bicameral requirement and Presentment Clauses of Art. I. The retained congressional power with respect to local District of Columbia legislation is such a provision.

Congress, under Art. I, § 8, cl. 17, may legislate for and grant self-government to the District of Columbia. District of Columbia v. Thompson Co., 346 U.S. 100 (1953). "The power of Congress over the District of Columbia is not limited to national power, but includes all legislative powers of a state in dealing with its affairs." Id. at 108. Thus Congress may delegate full "legislative power" to the

District of Columbia, "subject to constitutional limitations and to the power of Congress to revise, alter, or revoke the authority granted." Id. at 109.

In Northern Pipeline Construction v. Marathon Pipe Line Co., the Supreme Court noted that the powers granted under Art. 1, § 8, cl. 17 are "obviously different in kind from the other broad powers conferred on Congress: Congress' power over the District of Columbia encompasses the full authority of government, and thus, necessarily, the executive and judicial powers as well as the legislative." 458 U.S. 50, 102 S.Ct. 2858, 2874 (1982) (emphasis in the original). See Intervenor's motion, United States v. Calvin MacIntosh, Criminal Case No. F 3666-82, at 6.

Congress is not required to establish a local government for the District of Columbia which embodies the separation of powers principles of the national government. See Intervenor's motion at 3. In O'Donoghue v. United States, the Supreme Court held that the judges of the District of Columbia's Supreme Court and Court of Appeals were constitutionally protected from having their salaries reduced by an Act of Congress. 289 U.S. 516 (1933). Because those courts had authority not only in the District, but also over all controversies arising under the Constitution and the statutes of the United States and having nationwide application, the judges presiding over them had to be appointed to serve during their good behavior in accordance with the requirements of Art. III. Id. In O'Donoghue, the Court emphasized the principles of Separation of Powers, that the acts of each department shall never be controlled by, or subjected to, the coercive influence of either of the other departments. Id. at 530-34. The principles of Separation of Powers would be violated if "the legislature, though restrained from

changing the tenure of judicial offices, is at liberty to compel a resignation by reducing salaries to a copper." Id. at 534 (citation omitted).

However, where the system of the courts is made up of strictly local courts, the Superior Court and the District of Columbia Court of Appeals, Congress has plenary Art. I power to provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure. Palmore v. United States, 411 U.S. 387 (1973). Thus where the courts handle cases arising under the District of Columbia Code and relating to matters of strictly local concern, the principles of Separation of Powers have no application, and the citizens of the District are no more entitled to Art. III judges than the citizens of any of the fifty states who are tried for strictly local crimes. In Palmore, the Supreme Court made clear that Congress' power over the District of Columbia is plenary and that Congress "may exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes." Id. at 397. Congress may "legislate for the District of Columbia with respect to subjects that would exceed its power, or at least be very unusual, in the context of national legislation enacted under other powers delegated to it." Id. at 398. See also Gibbons v. District of Columbia, 116 U.S. 404, 408 (1886)(constitutional constraints on federal taxing power do not apply with respect to action concerning the District of Columbia; Employees' Liability Cases, 207 U.S. 463, 500 (1918) (constraints of Commerce Clause do not arply with respect to action concerning District of Columbia). See Intervenor's motion at 2-3.

The rationale behind the Presentment Clause is to "check whatever propensity a particular Congress might have to enact oppressive, improvident, or ill-considered measures."

INS v. Chadha, ___ U.S. at ___, 103 S.Ct. at 2782. See Intervenor's motion at 6. The Bicameral requirement is also constitutionally mandated to provide a check on each House of Congress. Id. at ___, 103 S.Ct. at 2783. However, where a body is exercising its plenary power over purely local matters "not affecting the relationship of the federal government to its citizens, nor any relationship between components of the federal government," see Intervenor's motion at 6, the principles of Separation of Powers and checks on authority have no application.

It is clear that Congress, by legislation presented to the President, may constitutionally establish a system of local governance that does not involve the President in the same way that must be done with respect to national matters. See Intervenor's motion at 4. Under the Self-government Act, local legislation is enacted by adoption by the City Council and presentation to the Mayor and becomes effective after a period of thirty (30) legislating days unless Congress disapproves. D.C. Code §§ 1-227(a), 1-233(c). See Intervenor's motion at 4-5. Thus legislation becomes effective by nonaction and without presidential participation. It follows that Congress may also establish a system where the President need not oversee congressional action preventing local legislation from becoming effective. Moreover, the fact that one House may disapprove is not significant since "it is as though a bill passed in one house and failed in another." See Buckley v. Valeo, 424 U.S. 1, 285 n. 30 (1976)(White, J., concurring in part and dissenting in part).

Furthermore, the power of either House to disapprove local legislation is not "legislation or ... an order, resolution, or vote requiring the concurrence of both Houses." Id. at 285. In Chadha, the Court held that congressional action is subject to bicameral and presentment

requirements when it contains "matter which is properly regarded as legislative in its character and effect." __ U.S. at ___, 103 S.Ct. at 2789 [citing S. Rep. No. 1335, 54th Cong., 2d Sess., 8 (1897)]. The Court concluded that the legislative veto was an exercise of legislative power because it "had the purpose and effect of altering the legal rights, duties and relations of persons." Id. at ___, 103 S.Ct. at 2789. In Chadha, the one-house veto operated to overrule the Attorney General and mandate Chadha's deportation. The power of Congress over local legislation in the District, however, is merely a "negative power" and "does not create new rights, duties, or relations."[2] See Intervenor's motion at 5.

In Chadha, Justice White in his dissenting opinion quoted Justice Brandeis:

> "The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress.... The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' Liverpool, N.Y. & P.S.S. Co. v. Emigration Commissioners, supra [113 U.S. 33, 5 S.Ct. 352, 28 L.Ed. 899]". Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (concurring opinion).

Id. at ___, 103 S.Ct. at 2796. (White, J., dissenting). This court cannot conclude that the Supreme Court's decision in Chadha is so broad as to invalidate the legislative veto provision of the Self-Government Act. The one-house veto of the Sexual Assault Reform Act was not unconstitutional, and therefore defendant was indicted and convicted under the proper statutes.

---

[2] In Process Gas Consumers Group v. Consumers Energy Council of America, ___ U.S. ___, 103 S.Ct. 3556 (1983), the Supreme Court affirmed the invalidation of legislative veto provisions which provided Congress with the power to merely disapprove agency rules. However, that case has no application here, where Congress has plenary power over local legislation which has no impact on any federal interest.

Accordingly, it is this 30th day of March, 1984,

ORDERED that defendant's motion be and hereby is denied.

CHIEF JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Memorandum Opinion was hand delivered to Douglas Wood, Esquire, counsel for defendant; to Donald J. Allison, Esquire, Assistant United States Attorney; and a copy was mailed postage prepaid to Mr. Wade Langley, defendant, District of Columbia Jail, 1901 D Street, S. E., Washington, D. C. 20003, on the 30th day of March, 1984.

CHIEF JUDGE

37-924 O—84——8

IN THE
SUPERIOR COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff

v.

JAMES EDWARD PRICE

Defendant

Criminal Case No. F 2522-83

MOTION TO ENTER AS AMICUS CURIAE TO CLARIFY THE RELEVANCE OF THE ALLEGED "LEGISLATIVE VETO" OF D.C. COUNCIL ACTIONS BY THE CONGRESS UNDER THE HOME RULE ACT

I, Stephen A. Koczak, a resident of the District of Columbia, with expert knowledge in legislative history of the so-called "Home Rule Act", herewith move the Court to permit me to file Constitutional arguments regarding the alleged applicability or relevance of the Supreme Court Case in Immigration and Naturalization Service versus Chadha, No. 80-1832 (June 23, 1983)

The Court's decision in that case was based on Article I, Section 7, Subsection 2 of the U.S. Constitution requiring bicameral action of the Congress.

The Supreme Court's decision is unassailable in all cases where there is an attempt by the Congress to apply a "legislative veto" of one House to an action by an officer of the Executive Branch who is acting under a statute which has been passed by both Houses of Congress.

However, in the case of the Home Rule Act, the Congress in exercising "disapproval" of legislation submitted to it under the Home Rule Act is, in fact, operating under Article I, Section 8, Subsection 17. Thus, an action of "disapproval" by either House is the equivalent to the failure or the refusal of either House to act upon a Bill passed by one House and referred to the other House.

Thus, the term "legislative veto" is inappropriate, and it is used inaccurately by persons not literate in the generation of the Home Rule Act and the provision for Congressional disapproval.

In fact, the very Constitutionality of the Home Rule Act hangs by the slim provision of "disapproval" by either House, because the Congress cannot alter the Constitution, or delegate Constitutional powers or abdicate them by statute. Had the Congress not retained the right of "disapproval" by either House, the Home Rule Act could have been challenged as being itself unconstitutional and all acts by the D. C. Council would have been null and void.

Whoever, therefore, seeks to apply the Supreme Court rule in Chadha, No. 80-1832, threathens to sever the only thread of constitutionality by which the Home Rule Act continues to hang.

Unfortunately, because of the impoverishment of legal language and confusion in legal analysis, much mischief has been created in the District of Columbia, both in the Council's chambers and the Mayor's office. This mischief, resulting from the unfortunate reliance of attorneys in the District of Columbia on hearsay and on each other's research, has even penetrated into the courts, to the impediment of speedy trials both in civil and criminal cases.

The intervener in this case, Stephen A. Koczak, pleads with the court to review the considerations which required the Congress, in passing the Home Rule Act, to reserve this right to "disapprove" D. C. Council actions in order to delegate as much of its legislative authority as possible without transgressing the Constitution itself.

The D. C. Council, when enacting legislation, is in this case no more than a joint subcommittee of the House and Senate and its actions do not constitute law in any sense whatsoever until both Houses have tacitly accepted its proposed legislation by the fact that neither House has chosen, under the principle of bicameralism, to exercise its right not to legislate.

Since no law exists, no law can be "vetoed", and the use of the term "legislative veto" is a misapplication, through casual reflection, of a principle out of context of the realities of the Constitution.

The intervener, Stephen A. Koczak, petitions the Court to accept these views as being submitted for the assistance of the Court, which is sensitive to the rights of defendants under the criminal law.

Respectfully submitted,

Stephen A. Koczak
Pro Se
As "Amicus Curiae)

2952 Macomb Street, N.W.
Washington, D. C. 20008

(202) 363-4750
(202) 686-0953

February 9, 1984

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served, by personally delivering, the foregoing Motion to the Cousel of the Defendant, T. W. Ullrich, Suite 1201, 1625 K Street, N.W. and to the District Attorney on this 9th day of February, 1984. I have done so because I have been informed that this case will be heard at 9:00 AM on the 10th day of February, 1984.

Stephen A. Kocsak
Pro Se

FRATERNAL ORDER OF POLICE
METROPOLITAN POLICE - LABOR COMMITTEE
300 INDIANA AVE., N.W., ROOM 1069, WASHINGTON, D.C. 20001 (202) 628-0600

Senator Charles Mathias, Chairman
Subcommittee on Govt. Efficiency
for the District of Columbia
U.S. Senate
Washington, D.C. 20510

April 19, 1984

Dear Senator Mathias,

We have been notified through members of the staff for the Sub-Committee on Government Efficiency that oral testimony will be limited to elected officials or their representatives, but that written testimony would be considered and entered into the record. Accordingly, I am writing to request your support for legislation proposed by the District of Columbia government to amend the District of Columbia Self-Government and Governmental Reorganization Act (the Home Rule Act) to remedy the adverse and unanticipated impact to District Government operations of the Supreme Court decision in "Immigration and Naturalization Service v. Chadha", 103 S.Ct. 2764 (1983), which decision struck down as unconstitutional the one-house legislative veto mechanism contained in many laws, including the D.C. Home Rule Act. It is my understanding that District officials have been working closely and in a cooperative spirit with members of both the House and the Senate since the Summer of 1983 on the grounds that all criminal code legislation enacted by the Council of the District of Columbia should be affirmatively approved by the Congress, rather than subject to a joint resolution of disapproval, which is the Congressional review mechanism proposed for all other acts of the Council.

Certainly the Fraternal Order of Police does not favor any action which would tend to weaken the criminal justice system, and my members have a direct and immediate interest in effective law enforcement in the District of Columbia, since they are the ones who deal with criminals and their victims on a daily basis. It seems to me, however, that the remedial legislation proposed by the District, which was substantially agreed to by both houses of Congress, need not have an adverse impact on future criminal legislation, and it would resolve the present stumbling block of criminal cases that are stalled in Superior Court due to uncertain validity of the statutes upon which the prosecutions are based, as a result of the "Chadha" decision. Moreover, while I do not always agree with the District government on all issues, I believe that the principle of Home Rule is an important one, and that the District's efforts on behalf of its citizens should not be unreasonably frustrated as the unforeseeable consequence of litigation which did not involve the District. I do not believe that the exercise of the Congress' constitutional jurisdiction

over District affairs will be affected by the proposed legislation. I do believe that it is in the best interests of the District and the Congress to resolve the present impasse in a constructive and expeditious manner which will enable the District Government to act responsibly to meet its legal and financial obligations and to better serve the citizens of the District of Columbia.

I appreciate your consideration of our views regarding this important matter.

With best wishes,

Sincerely,

Gary Hankins,
Chairman

LAZARD FRÈRES & CO.
ONE ROCKEFELLER PLAZA
NEW YORK, N.Y. 10020

CABLE ADDRESS "LAZARD NEW YORK"
TELEPHONE (212) 489-6600

NEW YORK

April 23, 1984

The Honorable Charles McC. Mathias, Jr.
Chairman
Subcommittee on Governmental Efficiency
and the District of Columbia
United States Senate
Suite SD-342, Dirksen Building
Washington, D.C. 20510

Dear Senator Mathias:

Lazard Freres & Co. has served as financial advisor to the District of Columbia since 1979. Over the past five years, we have assisted the District in preparing for the sale of its securities in the municipal bond market. During this time, we have also assisted the District in the private placement of over $200 million in tax-exempt bonds and notes. (We have also assisted the D.C. Housing Finance Agency in the sale of in excess of $100 million in housing bonds.) We believe that based on this experience we are knowledgeable about the prospects for the successful sale of District securities in the tax-exempt bond market and the benefits which would be derived from doing so.

First, let me outline some of the benefits which will result from the District borrowing through the public sale of securities rather than borrowing from the United States Treasury. The benefits to the District are obvious and substantial. A state or city with creditworthiness similar to that of the District can borrow funds at interest rates 2-3% lower than the Treasury would currently charge the District. That means that the District can save $2-3 million in just the first year from issuing a municipal bond rather than obtaining a capital loan from the Treasury. Over a period of 30 years these savings amount to $54-72 million.

The benefits to the United States are also substantial. For every $100 million the District does <u>not</u> borrow from the Treasury, the federal deficit is reduced by a corresponding $100 million. For every $100 million of past Treasury loans which are repaid from the proceeds of District bonds, the federal deficit is also reduced correspondingly.

These financial benefits will be available to the District and the United States if the District is permitted to move forward with its municipal bond program. To our knowledge, after significant progress by the District over the past few years, there is now only one obstacle impeding the successful entry of the District into the bond market. That problem is the legal cloud cast over the District Charter by the Supreme Court decision in Immigration and Naturalization Service v. Chadha. Some lawyers question whether that case has the effect of invalidating the process used by Congress to review laws enacted by the Council of the District. It has been suggested that if those provisions of the Charter are invalid then the entire Charter might be invalid in the absence of a severability clause. We understand that these contentions are being considered in certain legal proceedings currently pending in the courts.

Ultimately, the courts will have to decide whether those contentions have any legal merit. In the meantime, however, the cloud cast by those claims has prevented the District from obtaining the unqualified opinion of nationally recognized bond counsel that any bonds or notes issued by the District would be validly issued and enforceable according to their terms. On several occasions, we have advised the District that the sale of bonds or notes was not possible without an unqualified opinion of bond counsel that such bonds or notes are valid and binding obligations or some means of protecting the bond purchasers against a determination of invalidity due to Chadha.

Three major financial institutions and their legal counsel came to the same view in December of 1983 when, with the District, we approached them to determine whether a private placement of District general obligation revenue anticipation notes was possible. Each institution-- The First National Bank of Chicago, Morgan Guaranty Trust Company of New York, and Manufacturers Hanover Trust Company--independently determined that they would only be able to purchase District securities if the U.S. Treasury assumed the risks associated with the Chadha case. This unanimity of view apparently impressed the Treasury because it subsequently agreed to assume that risk in order to permit the District to issue $150 million of revenue anticipation notes rather than borrowing from the Treasury directly.

In our view, such an arrangement with the Treasury will be required on all District bond or note issues until the Chadha cloud on financial transactions has been removed. We do not know, however, whether the Treasury would be prepared to continue to provide such an arrangement--particularly for 30 year bonds. On the other hand, even if the Treasury were prepared to do so, we do know that such an arrangement will detract from the marketability of District bonds when compared to an elimination of the Chadha cloud altogether.

We are aware that your committee is considering legislation which would remove the Chadha problem from financial matters by affirming the validity of the institutions of government in the District and the basic laws of the District. It would further make clear that the invalidation of any provision of the District Charter would not affect the validity of the other provisions. We also understand that properly drafted legislation to this effect would permit District bond counsel to render an unqualified opinion on the validity and enforceability of District bonds or notes. As financial adviser, we are of the view that in the absence of the proposed legislation or continued Treasury assumption of the Chadha risk, that the sale of bonds by the District will remain impossible.

If we can be of any further assistance to you or the committee, please do not hesitate to call on us.

Very sincerely yours,

Franklin D. Raines
Senior Vice President

LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA
Room 718 Dupont Circle Building | 1346 Connecticut Avenue, N.W. | Washington, D.C. 20036
phone 785-2616

April 30, 1984

The Hon. Charles McC. Mathias
Chairman, Subcommittee on Governmental
Efficiency and the District of Columbia
Governmental Affairs Committee
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

The D.C. League of Women Voters urges expeditious passage of S. 1858, which amends the District of Columbia Self-Government and Governmental Reorganization Act by replacing the "legislative veto" provision with a procedure of disapproval by both Houses of Congress and by the President.

The D.C. League joins with our delegate to the U.S. House of Representatives, our Mayor, and the Chairman of the Council of the District of Columbia in supporting S. 1858 as a reasonable interim measure to resolve the confusion caused by the Supreme Court's ruling in INS vs. Chadha, to maintain our current Home Rule status insofar as possible, and to provide the kind of stability in our affairs that will permit the Government of the District of Columbia to obtain the financing it needs.

The support of the D.C. League of Women Voters for Home Rule for the District of Columbia goes back almost to the founding of the organization in 1920. This is a priority issue for the D.C. League and for the League of Women Voters of the United States as well.

Our goal is to achieve the fullest possible citizen participation in and responsibility for the government of the District of Columbia and full voting representation in the Senate and House of Representatives as though D.C. were a state. We respect the interest of the citizens of the United States in having a nation's capital of which they can be proud; in fact, their desire for a beautiful, well-run, safe capital is no different from our own.

We are disturbed that recent progress toward enlarging the District's Home Rule authority has come to a halt and that, instead, Home Rule itself has become threatened. As was said several times at the April 25, 1984 hearing of your Committee on this subject, the fact that the Chadha decision has had ad-

verse effects on the District is not the District's fault. Moreover, whether this ruling actually applies to the District is yet to be determined by the courts.

We hope that S. 1858 will put us again on the track of movement toward ever-increasing self-government. We therefore object strenuously to the proposal by the Department of Justice that would subject our criminal laws to a more exacting requirement (a process of approval instead of disapproval) than is proposed with respect to other laws.

Thank you for your considerate attention to the needs and rights of D.C. citizens. Please communicate to your Committee members and colleagues in the Senate the D.C. League's support of S. 1858 as an interim measure.

Sincerely,

Sue Panzer

Sue Panzer
President

cc: Members of the Subcommittee
Delegate of the District of Columbia to the U.S. House of Representatives
Mayor of the District of Columbia
Chairman and Members of the Council of the District of Columbia

Metropolitan Washington Council AFL-CIO

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24 April 1984

Honorable Charles Mathias
Chair, Senate Subcommittee on Government
Efficiency and the District of Columbia
United States Senate
Washington, DC 20510

Dear Senator Mathias;

As president of the Metropolitan Washington Council, AFL-CIO, representing 90,000 union members and their families in the District of Columbia, I want to urge you to take immediate action to ensure a prompt and just resolution of the situation we face as a result of the Chadha decision. We support SB 1858.

This decision affects the District in a number of ways. Of most concern to the labor movement is the impact this decision would have on jobs. Without clarification of the financial implications of Chadha, the employment security of city workers would be threatened, and major public works already in progress could be halted, leaving several hundred public sector and building trades workers unemployed. In a city faced currently with an unemployment rate which exceeds 11%, this is unacceptable to us.

As a strong friend of the District and of Home Rule, I know that you share labor's concern about the legalistic limbo the Chadha decision has thrown us into. I look forward to working with you toward a speedy resolution of this problem.

Sincerely,

Joslyn N. Williams
President

opeiu #2
4/24/84

WASHINGTON
BOARD of REALTORS, Inc.
777 - 14th Street, N.W., Suite 200 Washington, D.C. 20005 (202) 628-4494

April 27, 1984

The Hon. Charles McC. Mathias, Jr.
Chairman
Governmental Affairs Subcommittee on
Governmental Efficiency and the
District of Columbia
United States Senate
Washington, D.C. 20510 Re: S-1858

Dear Senator Mathias:

The Washington Board of Realtors, which represents more than 1300 real estate brokers and salespersons licensed to practice in the District of Columbia, as well as more than 200 persons in the affiliated fields of banking, law, architecture, appraising, title insurance and construction, strongly supports the Home Rule Act Amendment S-1858. Our members live in the District of Columbia, Maryland, Virginia and elsewhere, and they work for companies doing business in those jurisdictions and, in many cases, most of the United States.

The District of Columbia government has, under the leadership of Mayor Barry, sought assiduously to expand the city's economic base and improve services to its residents. These efforts have resulted in a much improved perception of the city's potential for economic, social and cultural growth and stability.

The reaction of the legal community to the U.S. Supreme Court's decision in the Chadha case has caused concern among all of us that the city's positive momentum may be curtailed. We are particularly mindful of the impact of the interpretation of the decision on the willingness of the city's financial advisor and bond counsel to issue an unqualified legal opinion on the city's authority with respect to issuance of bonds, notes or other contractual debt obligations. Indeed, we question the city's ability to borrow from banks as a result of the Chadha decision, and we are both fearful and anxious that the denial

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of tax-exempt bond financing to assist in the construction and rehabilitation of housing is adversely affecting our low and moderate income residents and the city's supply of housing for homeownership and rental purposes.

Aside from our general concern that a cloud over the city's basic home rule authority is implicit in the interpretation of the Chadha decision as it applies to the District of Columbia, we are particularly concerned that funds for many public and private improvements are severely jeopardized.

As business people serving the District of Columbia and supporting its efforts toward economic stabilization, we urge you and your colleagues to report favorably, and quickly, on S-1858 and ask your help in obtaining its final approval by the U.S. Senate.

Sincerely,

G. Thomas Borger
President

GTB/sm

cc: The Hon. Marion Barry, Mayor, District of Columbia
The Hon. David Clarke, Chairman, D.C. City Council

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